(1)

FILED

No. 97 930 DEC - 4 1997

OFFICE OF THE CLERK

IN THE SUPREME COURT OF THE UNITED STATES
October Term, 1997

VICTORIA BUCKLEY, Colorado Secretary of State,
Petitioner,
vs.
AMERICAN CONSTITUTIONAL LAW FOUNDATION, INC.; DAVID AITKEN; JON BARAGA; CRAIG ELEY; JACK HAWKINS; LONNIE HAYNES; ALDEN KAUTZ; and BILL ORR, individually and as guardian of WILLIAM DAVID ORR,
Respondents.

PETITION FOR WRIT OF CERTIORARI
to the United States Court of Appeals for the Tenth Circuit

GALE A. NORTON*
Attorney General
MARTHA PHILLIPS ALLBRIGHT
Chief Deputy Attorney General
MAURICE G. KNAIZER
Deputy Attorney General
State Services Section
Attorneys for Petitioner
1525 Sherman Street, 5th Floor
Denver, Colorado 80203
Telephone: (303) 866-5228
FAX: (303) 866-5671
***Counsel of Record**

118 pp.

QUESTION PRESENTED FOR REVIEW

Whether the State of Colorado may constitutionally regulate the process of circulating initiative petitions by requiring that: (1) petition circulators who verify the signatures of petition signers must be registered electors; (2) petition circulators must wear identification badges; and (3) proponents of an initiative must file reports disclosing the amounts paid to circulators and the identity of petition circulators.

TABLE OF CONTENTS

PAGE

QUESTION PRESENTED FOR REVIEW i

OPINION BELOW 1

JURISDICTION 2

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED 2

STATEMENT OF THE FACTS 2

STATEMENT OF THE CASE 4

REASONS FOR GRANTING THE PETITION 6

I. REQUIRING CIRCULATORS TO BE REGISTERED ELECTORS HAS LITTLE, IF ANY, EFFECT UPON PROTECTED SPEECH. 8

II. DISCLOSURE OF THE IDENTITY, STATUS AND AMOUNT PAID TO CIRCULATORS IS CONSTITUTIONAL. 11

CONCLUSION 12

TABLE OF AUTHORITIES

CASES **PAGE**

Arizonans for Official English v. Arizona, 520 U.S. ___, 117 S. Ct. 1055, 137 L. Ed. 170 (1977) 8

Bernbeck v. Moore, 126 F.3d 1114 (8th Cir. 1997) 8

Buckley v. Valeo, 424 U.S. 1 (1976) 12

Carrera Place, Ltd. v. Arapahoe County Board of Equalization, 761 P.2d 197, 203 (Colo. 1988) 3

Dunn v. Blumstein, 405 U.S. 330 (1972) 10

Fishman v. Schaffer, 429 U.S. 1325 (1976) 6

Gregory v. Ashcroft, 501 U.S. 452 (1991) 10

Grosjean v. American Press Co., 297 U.S. 233 (1935) 12

Igneri v. Moore, 898 F.2d 870 (2d Cir. 1990) 12

Loonan v. Woodley, 882 P.2d 1380 (Colo. 1994) 11

Marsten v. Lewis, 410 U.S. 679 (1973) 9, 10

McIntyre v. Ohio Elections Comm'n, 514 U.S. 334 (1995) 6

CASES **PAGE**

Meyer v. Grant, 486 U.S. 414 (1988) 4, 6

Minnesota State Ethical Practices Bd. v. National Rifle Ass'n, 761 F.2d 509 (8th Cir. 1985) 12

Riley v. National Federation of the Blind of North Carolina, 487 U.S. 781 (1988) 12

Romer v. Evans, 517 U.S. ___, 116 S. Ct. 1620, 134 L. Ed. 855 (1996) 8

Rosario v. Rockefeller, 410 U.S. 752 (1973) 10

Storer v. Brown, 415 U.S. 724 (1974) 7

Sugarman v. Dougall, 413 U.S. 634 (1973) 10

Timmons v. Twin Cities Area New Party, 117 S. Ct. 1364, 137 L. Ed. 2d 589 (1997) 7

CONSTITUTIONS

Colo. Const. art. V, § 1 . . . . . 2, 3

Colo. Const. art. V, § 1(6) 1, 2, 5

Colo. Const. art. VII, § 1 2

CONSTITUTIONS **PAGE**

U.S. Const. amend. I 1, 2

U.S. Const. amend. XIV 1

STATUTES

28 U.S.C. § 1254(1) 2

28 U.S.C. § 2101 2

42 U.S.C. § 1973gg 10

1913 Colo. Sess. Laws 310 3

Colo. Rev. Stat. § 1-2-101 (1997) 3

Colo. Rev. Stat. § 1-2-105(2) (1997) 9

Colo. Rev. Stat. § 1-2-202 (1997) 10

Colo. Rev. Stat. § 1-2-207 (1997) 10

Colo. Rev. Stat. § 1-2-212 (1997) 10

Colo. Rev. Stat. § 1-2-213 (1997) 10

Colo. Rev. Stat. § 1-40-111(2) (1997) 7

Colo. Rev. Stat. § 1-40-112 (1997) 1, 2

Colo. Rev. Stat. § 1-40-112(1) (1997) 5

TABLE OF AUTHORITIES

STATUTES **PAGE**

Colo. Rev. Stat. § 1-40-112(2) (1997) 4, 5

Colo. Rev. Stat. § 1-40-121 (1997) 1, 2

Colo. Rev. Stat. § 1-40-121(1) (1997) 4, 5

Colo. Rev. Stat. § 1-40-121(2) (1997) 4, 5

OTHER AUTHORITIES

David B. Magleby, "Let The Voters Decide? An Assessment of the Initiative and Referendum Process" 66 Colo. L. Rev. 13 (1995) 6

No. _____

IN THE SUPREME COURT OF THE UNITED STATES
October Term, 1997

VICTORIA BUCKLEY, Colorado Secretary of State,
Petitioner,
vs.
AMERICAN CONSTITUTIONAL LAW FOUNDATION, INC.; DAVID AITKEN; JON BARAGA; CRAIG ELEY; JACK HAWKINS; LONNIE HAYNES; ALDEN KAUTZ; and BILL ORR, individually and as guardian of WILLIAM DAVID ORR,
Respondents.

PETITION FOR WRIT OF CERTIORARI to the United States Court of Appeals for the Tenth Circuit

Victoria Buckley, Colorado Secretary of State, petitions for a writ of certiorari to review the judgment of the Court of Appeals for the Tenth Circuit in this case, holding portions of Colo. Const. art. V, § 1(6), Colo. Rev. Stat. § 1-40-112 (1997), and Colo. Rev. Stat. § 1-40-121 (1997) unconstitutional under the First and Fourteenth Amendments to the United States Constitution.

OPINION BELOW

The opinion of the Tenth Circuit Court of Appeals is reported at 120 F.3d 1092 (10th Cir. 1997) (Pet. App. A). The District Court opinion is reported at 870 F. Supp. 995 (D. Colo. 1994) (Pet. App. B).

JURISDICTION

The jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 1254(1) and 2101. The opinion of the Tenth Circuit Court of Appeals was issued on July 28, 1997 (Pet. App. A-1). A petition for rehearing and a suggestion for rehearing en banc were filed on August 8, 1997. The petition and the suggestion were denied on September 8, 1997. (Pet. App. C.)

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Const. amend. I; Colo. Const. art. V, § 1(6); Colo. Rev. Stat. § 1-40-112 (1997), and Colo. Rev. Stat. § 1-40-121 (1997). The texts of these provisions are included in Pet. App. D.

STATEMENT OF THE FACTS

In 1910, Colorado passed a constitutional amendment, Colo. Const. art. V, § 1, authorizing citizen-initiated legislation. The amendment provided that at least eight percent of legal voters must sign a petition to propose a measure; that each signer must be a qualified elector; that each signer's residence and the date of signing must be included; and that each circulator must be a qualified elector. A qualified elector was a person who was over the age of twenty-one, was a citizen of the United States, and "resided in the state twelve months immediately preceding the election at which he offers to vote and in the county, city, town, ward or precinct, such time as may be prescribed by law." Colo. Const. art. VII, § 1, 1921 Compiled Laws of Colorado. A qualified elector was not required to register in order to sign a petition.

In 1913, the Colorado General Assembly passed the statute implementing the initiative process. 1913 Colo. Sess. Laws 310. It required that each petition contain a warning that it is a felony for anyone to sign a petition under a false name, knowingly to sign his or her name more than once for the same measure, or to sign a petition when he or she was not a qualified elector. It also established a procedure by which qualified electors could protest the determination that the petition was insufficient. Criminal penalties were imposed for willful violation of the initiative code.

In 1980, the voters amended Colo. Const. art. V, § 1 in two important respects. First, the amendment required that persons who sign and circulate a petition must be registered electors, rather than qualified electors.[1] As noted in the comments from the General Assembly ballot analysis, the amendment placed greater responsibility upon the circulator to determine whether the individuals signing the petitions are eligible to sign (Pet. App. E-9).[2] Second, the number of signatures required to place a measure on the ballot was reduced from 8% to 5% of the total votes cast for the Secretary of State at the previous election. The reduction in the number of required signatures and the extension of the deadline to file petitions were designed to offset the requirement that signers and circulators must be registered electors. (Pet. App. E-10.)

---

[1]A person may be registered if he is eighteen years of age, is a United States citizen, and has been a resident of Colorado for at least 30 days prior to the election. Colo. Rev. Stat. § 1-2-101 (1997).

[2]The General Assembly's ballot analysis provides important insight into the public's understanding of the amendment when it was passed. *Carrera Place, Ltd. v. Arapahoe County Board of Equalization*, 761 P.2d 197, 203 (Colo. 1988).

In 1988, this Court declared unconstitutional the prohibition against payment of petition circulators. *Meyer v. Grant*, 486 U.S. 414 (1988). Subsequently, Colorado experienced a surge in the use of paid petition circulators and in the number of complaints of abuses committed by circulators. (Pet. App. F-5.) In order to limit the possibility of fraud and to enhance public confidence in the initiative process, the Colorado General Assembly instituted two reforms. First, the circulators must display identification badges. The badges disclose the name of each circulator, the status as paid or volunteer circulators, and, if paid, the name and telephone number of the person or entity employing the circulator. Colo. Rev. Stat. § 1-40-112(2) (1997).

In addition, the proponents of a petition must sign and file reports with the Secretary of State setting forth the names of the proponents, the name, residential and business address of each of the paid circulators, the name of the proposed ballot measure for which petitions are being circulated by paid circulators, and the amount of money paid and owed to each paid circulator for petition circulation during the month in question. Colo. Rev. Stat. § 1-40-121(2) (1997). A final report must identify circulators who were paid. Colo. Rev. Stat. § 1-40-121(1) (1997).

STATEMENT OF THE CASE

The Respondents are, respectively, a public interest organization, and individual Colorado residents. They challenge several procedures governing the circulation and submission of initiative petitions. In particular, the Respondents contested the disqualification of petitions circu-

lated by non-registered voters[3], the disqualification of petitions which are circulated by persons without badge identification,[4] the filing of monthly reports by proponents of petitions which are circulated by paid circulators,[5] and the disclosure of the identity of circulators in the final reports.[6]

The district court concluded that the requirement that circulators must be registered electors is constitutional, holding that the existence and scope of the initiative and referendum are dictated by the Colorado electorate. "The people are the source of the power and they may exercise their sovereign authority to limit the scope of that power so long as there is no discriminatory classification." (Pet. App. B-22.) However, the district court declared unconstitutional the requirement that each circulator wear a badge disclosing the circulator's name and status as paid or volunteer. The court concluded that the badge identification requirements caused a decrease in the pool of available circulators, but did not advance a compelling state interest. (Pet. App. B-22.) The district court also concluded that the required disclosures of the name and business and residential address of each said circulator was unconstitutional. The District Court found that "[w]hat is of interest is the payor, not the payees." (Pet. App. B-22-24.)

Finally, the district court concluded that the monthly reporting requirement was unconstitutional because "(p)repa-

---

[3]*See* Colo. Const. art. V, § 1(6) and Colo. Rev. Stat. § 1-40-112(1) (1997).

[4]*See* Colo. Rev. Stat. § 1-40-112(2) (1997).

[5]*See* Colo. Rev. Stat. § 1-40-121(2) (1997).

[6]*See* Colo. Rev. Stat. § 1-40-121(1) 1997).

ration of monthly reports is burdensome and involves additional expense to those supporting an initiative or referendum petition." (Pet. App. B-24.)

On appeal, the Tenth Circuit Court of Appeals affirmed the district court's decision in all respects, except that it further declared unconstitutional the requirement that a circulator be a registered elector. The Tenth Circuit ruled that the requirement unconstitutionally bars persons who are not registered voters from participating in core political speech. (Pet. App. A-29).

REASONS FOR GRANTING THE PETITION

The use of the initiative and referendum process has grown considerably during the last two decades. David B. Magleby, "Let The Voters Decide? An Assessment of the Initiative and Referendum Process" 66 Colo. L. Rev. 13, 26-28 (1995).[7] Indeed, this Court has recently reviewed regulations affecting participation by citizens in the initiative process. *McIntyre v. Ohio Elections Comm'n*, 514 U.S. 334 (1995); *Meyer v. Grant*, 486 U.S. 414 (1988). While these cases have analyzed circumstances which directly and clearly impacted the free speech rights of circulators and other participants in the initiative process, neither the permissible extent of procedural restrictions, *Fishman v. Schaffer*, 429 U.S. 1325, 1326-28 (1976), nor the "larger circumstances" under which a State may "require the speaker to disclose its interest by disclosing its identity" has been defined. *McIntyre v. Ohio Elections Comm'n*, 514 U.S. at 358 (Ginsburg. J., concurring).

[7]Twenty-seven states have a form of the initiative and referendum. Magleby, *supra*, at 22.

This Court has long recognized that the States may exercise "substantial regulation of elections if they are to be fair and honest and if some sort of order, rather than chaos, is to accompany the democratic process". *Storer v. Brown*, 415 U.S. 724, 730 (1974). States have a strong interest in protecting the stability, integrity and fairness of their political systems. *Timmons v. Twin Cities Area New Party*, 117 S. Ct. 1364, 1373, 1374, 137 L. Ed. 2d 589 (1997).

The Tenth Circuit Court of Appeals recognized that petition circulators perform administrative functions on behalf of the State of Colorado which may be regulated. To enhance the process, Colorado may impose upon petition circulators appropriate qualifications, including limits regarding age, residency and citizenship. (Pet. App. A-29-30.) Colorado may also demand that each circulator sign an oath at the time that the circulator submits the petition. The oath may include the circulator's address. (Pet. App. A-27-28). In addition, the identity of each circulator, including the circulator's address, is disclosed when the proponents submit the petitions for verification by the Secretary. (Pet. App. A-34.) The Respondents did not contest the statutory provision which provides that the affidavit of the circulator of the petition presented to the Secretary of State must include the circulator's name and residential address. Colo. Rev. Stat. § 1-40-111(2) (1997). Despite acknowledging the important ministerial role played by circulators, the Tenth Circuit Court of Appeals ruled that Colorado may not require each circulator to affirm his age, residency or citizenship by registering to vote prior to circulating petitions. Moreover, Colorado now may not require circulators or proponents to disclose the identity of circulators prior to the time that petitions are submitted.

The issue in this case is when, not whether, information must be disclosed. Colorado maintains that the identity and status of the circulator can be disclosed when the circulation

process begins. The Tenth Circuit Court of Appeals concluded that the circulator could not be identified until after the petitions are submitted.

Initiatives are assuming a more prominent, and, in some instances, a more contentious, role in American politics. *Cf. Arizonans for Official English v. Arizona*, 520 U.S. ___, 117 S. Ct. 1055, 137 L. Ed. 170 (1977); *Romer v. Evans*, 517 U.S. ___, 116 S. Ct. 1620, 134 L. Ed. 855 (1996). This case is important because the line between appropriate regulation of the initiative process and prohibited regulation directly affecting the discussion of political issues is unclear. Thus, this case presents an opportunity to provide necessary guidance so that States can develop procedures which will ensure the integrity of the initiative process, while preserving the right of free speech.[8]

I. REQUIRING CIRCULATORS TO BE REGISTERED ELECTORS HAS LITTLE, IF ANY, EFFECT UPON PROTECTED SPEECH.

The Tenth Circuit Court of Appeals recognized that obtaining signatures is an integral part of placing a measure on the ballot and that Colorado "has a strong, often compelling, interest in preserving the integrity of its electoral system." (Pet. App. A-27). The Tenth Circuit Court of Appeals further acknowledged that circulators play an "important role" (Pet. App. A-27) in the process because they are "entrusted with personal responsibility to prevent irregularities in the petition process." (Pet. App. A-28).

---

[8]The issue is not limited to Colorado. Recently, the Eighth Circuit Court of Appeals declared unconstitutional a Nebraska statute under which a circulator must also be a registered elector. *Bernbeck v. Moore*, 126 F.3d 1114 (8th Cir. 1997).

Colorado may impose certain restrictions on circulators to ensure that they will properly execute their election functions. Circulators must be eighteen years of age, "(b)ecause maturity is reasonably related to Colorado's interest in preserving the integrity of ballot issue elections." Colorado could also impose a residency requirement. (Pet. App. A-29-30.)

Registration is little more than an oath taken by a qualified elector in which the circulator swears that he is eighteen, a citizen of the United States and a resident of Colorado. Colo. Rev. Stat. § 1-2-105(2) (1997). It is minimal assurance that the circulators meet these unobjectionable qualifications. However, the Tenth Circuit Court of Appeals eviscerated Colorado's ability to enforce the residency and age restrictions by eliminating the requirement that circulators must be registered electors. The Tenth Circuit's conclusion is based on the erroneous assumption that registration "**bars** persons who are not registered voters from circulating petitions, **excluding** that group of persons from participating in core political speech." (Pet. App. A-29) (emphasis added).

The Tenth Circuit's analysis is flawed because it incorrectly assumes that the registration requirement creates an insurmountable barrier to the circulation of petitions. At the time of trial, approximately 1.9 million persons were registered to vote in Colorado; that is, they were 18 years of age, a citizen of the United States and a resident of the State for 30 days (Pet. App. G-1). Registering to vote is a simple process which does not unduly limit the right to participate in the election process or add to the qualifications needed to participate in the political process. *Marsten v. Lewis*, 410

U.S. 679 (1973) (*per curiam*); *Dunn v. Blumstein*, 405 U.S. 330, 346 (1972).[9]

The registration requirement differs little from procedures which the Court has deemed constitutional. *Rosario v. Rockefeller*, 410 U.S. 752 (1973). In *Rosario*, this Court concluded that a time deadline imposed for registering to vote in a party primary did not present a constitutional impediment. In particular, the Court noted that the voters merely could take advantage of the available opportunities to register. *Id.* at 757.

Here the Tenth Circuit Court of Appeals disregarded the voice of the people of the State of Colorado. The District Court correctly noted that the Colorado electorate chose to impose the registration, implicitly acknowledging that the circulator assumes a public role which can be regulated. This Court has long recognized "the authority of the People of the States to determine the qualifications of their most important government officials," *Gregory v. Ashcroft*, 501 U.S. 452, 463 (1991), and reiterated that scrutiny "will not be so demanding where we deal with matters resting firmly within a state's constitutional prerogative". *Id.* at 469 (quoting *Sugarman v. Dougall*, 413 U.S. 634, 647 (1973)). The Tenth Circuit's analysis ignored this Court's mandate and neglected to give due deference to the voters of Colorado.

---

[9]At the time that *Marsten* and *Dunn* were decided, most persons registered at the local clerk and recorder's offices. Recently, the Congress liberalized voting procedure so that persons could register at any place where federal benefits are obtained. 42 U.S.C. § 1973gg. In addition, Coloradans are able to register at the county clerk's office by affidavit, by federal postcard, at branch offices, and at driver's license facilities. Colo. Rev. Stat. §§ 1-2-202, -207, -212, and -213 (1997).

II. DISCLOSURE OF THE IDENTITY, STATUS AND AMOUNT PAID TO CIRCULATORS IS CONSTITUTIONAL.

Both the district court and the Tenth Circuit declared unconstitutional the disclosure of the identity of each circulator prior to the filing of the petitions with the Secretary of State, and of the paid status of circulators. The foundation of the Tenth Circuit's analysis is the assertion that the "[c]irculating a petition is akin to distributing a handbill." (Pet. App. A-35). The analogy must be rejected.

A petition is much more than a handbill. It is, in essence, a preliminary ballot which determines whether a measure has adequate support to qualify for the ballot at the general election. *Loonan v. Woodley*, 882 P.2d 1380, 1386 (Colo. 1994). The circulator collects the votes and presents them to Secretary of State to be validated and counted. The signers depend upon the circulators to collect and submit the signatures. The Tenth Circuit itself recognized that "circulators are, in effect, entrusted with personal responsibility to prevent irregularities in the petition process." (Pet. App. A-28.) The circulators are fiduciaries for the petition signers. Disclosing the circulator's name and status as a paid or volunteer circulator on a badge is not intrusive; it is necessary. A signer should have easy access to the name of the person who will be submitting the signer's signature for review.

Similarly, the monthly reports and the disclosure of the paid status of circulators are also constitutionally unobjectionable. Given the circulator's status as a guarantor of the integrity of the process, both signers and members of the public in general should be allowed to know whether, and how much, circulators are being paid to advance an initiative. Such disclosure allows citizens insight into the motivation of the individuals purporting to represent the

voters, thereby increasing public confidence. (Pet. App. B-23.) By enhancing their ability to determine the source of initial support for the measure, citizens can assess whether the measure has such significant grassroots support that people are willing to volunteer their time.[10] As this Court has noted, "an informed public opinion is the most potent of all restraints upon misgovernment." *Grosjean v. American Press Co.*, 297 U.S. 233, 250 (1935). *Cf. Riley v. National Federation of the Blind of North Carolina*, 487 U.S. 781, 800 n.11 (1988) (disclosure of identity and paid status constitutional).

CONCLUSION

For the above-stated reasons, the Petition for Writ of Certiorari should be granted.

GALE A. NORTON*
Attorney General

MARTHA PHILLIPS ALLBRIGHT
Chief Deputy Attorney General

MAURICE G. KNAIZER
Deputy Attorney General
State Services Section

Attorneys for Petitioner

1525 Sherman Street, 5th Floor
Denver, Colorado 80203
Telephone: (303) 866-5228
FAX: (303) 866-5671
*Counsel of Record

[10]Disclosure requirements have been sustained in a number of contexts, even when the strict scrutiny standard has been applied. This Court has affirmed their use in candidate elections. *Buckley v. Valeo*, 424 U.S. 1, 64 (1976). Minnesota requires the disclosure of the name, address, occupation and place of business of each person who contributes $100 or more for or against ballot questions. *Minnesota State Ethical Practices Bd. v. National Rifle Ass'n*, 761 F.2d 509, 512 (8th Cir. 1985). New York requires political party chairpersons to disclose certain financial assets. *Igneri v. Moore*, 898 F.2d 870 (2d Cir. 1990).

APPENDIX A

120 F.3d 1092
97 CJ C.A.R. 1520
(Cite as: 120 F.3d 1092)

AMERICAN CONSTITUTIONAL LAW FOUNDATION, INC.; David Aitken; Jon Baraga; Craig C. Eley; Jack Hawkins; Lonnie Haynes; Alden Kautz; Bill Orr, individually and as the Parent and Guardian of William David Orr,

Plaintiffs-Appellants,

v.

Natalie MEYER, individually and as Secretary of State for the State of Colorado; Douglas Brown, individually and as Director of Legislative Legal Services for the State of Colorado,

Defendants-Appellees.

AMERICAN CONSTITUTIONAL LAW FOUNDATION, INC.; David Aitken; Jon Baraga; Craig C. Eley; Jack Hawkins; Lonnie Haynes; Alden Kautz; William David Orr; Bill Orr, individually and as the Parent and Guardian of William David Orr,

Plaintiffs-Appellees,

v.

Natalie MEYER, individually and as Secretary of State for the State of Colorado; Douglas Brown, individually and as Director of Legislative Legal Services for the State of Colorado,

Defendants-Appellants.

Nos. 94-1576, 94-1581.

United States Court of Appeals,
Tenth Circuit.
July 28, 1997.

Nonprofit public interest organization and individuals who regularly participated in Colorado's initiative and referendum petition process brought § 1983 action against state officials, challenging statutes regulating petition process. The United States District Court for the District of Colorado, Richard P. Matsch, Chief Judge, 870 F.Supp. 995, upheld certain statutes and struck others. Parties cross-appealed. The Court of Appeals, Briscoe, Circuit Judge, held that: (1) Colorado statute requiring initiative and referendum petition circulators to be registered electors unconstitutionally impinged on free expression; (2) Colorado statute requiring circulators for initiative and referendum petitions to wear personal identification badges unconstitutionally infringed on circulators' First Amendment rights; and (3) provisions of Colorado statute requiring disclosure of information regarding paid circulators of initiative and referendum petitions violated First Amendment. Affirmed in part and reversed in part.

[1] STATUTES k343
361k343
Under Colorado system allowing citizens to place issues on ballot by petition, general assembly has exclusive authority to determine whether law is necessary for immediate preservation of public peace, health, or safety, and thus whether referendum is unavailable on that basis. West's C.R.S.A. Const. Art. 5, § 1(2, 3).

[2] STATUTES k303

361k303
Under Colorado law, when general assembly attaches "safety clause" to a law, referendum on that law is precluded, although right of initiative remains. West's C.R.S.A. Const. Art. 5, § 1(3).

[2] STATUTES k343
361k343
Under Colorado law, when general assembly attaches "safety clause" to a law, referendum on that law is precluded, although right of initiative remains. West's C.R.S.A. Const. Art. 5, § 1(3).

[3] STATUTES k302
361k302
Colorado Constitution grants general assembly authority to adopt legislation designed to prevent fraud, mistake, or other abuses in petition process for initiative and referendum. West's C.R.S.A. Const. Arts. 5, 7, §§ 1(2), 11.

[3] STATUTES k342
361k342
Colorado Constitution grants general assembly authority to adopt legislation designed to prevent fraud, mistake, or other abuses in petition process for initiative and referendum. West's C.R.S.A. Const. Arts. 5, 7, §§ 1(2), 11.

[4] STATUTES k306
361k306
Under Colorado's initiative and referendum process, petition circulators assume personal responsibility to prevent irregularities in process. West's C.R.S.A. §§ 1-40-111(2), 1-40-132(1).

[4] STATUTES k346
361k346

Under Colorado's initiative and referendum process, petition circulators assume personal responsibility to prevent irregularities in process. West's C.R.S.A. §§ 1-40-111(2), 1-40-132(1).

[5] CONSTITUTIONAL LAW k82(8)
92k82(8)
Degree of scrutiny that Court of Appeals would apply in reviewing manner in which Colorado regulated its initiative and referendum petition process depended upon extent to which challenged laws burdened challengers' First and Fourteenth Amendment rights, notwithstanding challengers' claims that regulations were subject to exacting scrutiny on ground that they significantly burdened political speech. U.S.C.A. Const.Amends. 1, 14.

[5] CONSTITUTIONAL LAW k90.1(1.2)
92k90.1(1.2)
Degree of scrutiny that Court of Appeals would apply in reviewing manner in which Colorado regulated its initiative and referendum petition process depended upon extent to which challenged laws burdened challengers' First and Fourteenth Amendment rights, notwithstanding challengers' claims that regulations were subject to exacting scrutiny on ground that they significantly burdened political speech. U.S.C.A. Const.Amends. 1, 14.

[5] CONSTITUTIONAL LAW k274.2(1)
92k274.2(1)
Degree of scrutiny that Court of Appeals would apply in reviewing manner in which Colorado regulated its initiative and referendum petition process depended upon extent to which challenged laws burdened challengers' First and Fourteenth Amendment rights, notwithstanding challengers' claims that regulations were subject to exacting scrutiny on ground that they significantly burdened political speech. U.S.C.A. Const.Amends. 1, 14.

[6] ELECTIONS k5
144k5
General rule is that states have power to regulate their elections and access to their ballots.

[7] CONSTITUTIONAL LAW k82(8)
92k82(8)
Strict scrutiny was not warranted in review, under First Amendment, of Colorado statute imposing six-month deadline for submission of initiative and referendum petitions, given that deadline did not impose significant burden on ability of organized proponents to place measure on ballot. U.S.C.A. Const.Amend. 1; West's C.R.S.A. § 1-40-108(1).

[8] CONSTITUTIONAL LAW k82(8)
92k82(8)
Colorado statute requiring that initiative and referendum petitions be filed six months after titles, submission clause, and summary are fixed was reasonable, nondiscriminatory ballot access regulation and did not violate First and Fourteenth Amendments; requirement did not significantly burden ability of organized proponents to place measure on ballot, and served state's interests in preserving election integrity, maintaining orderly ballot, and limiting voter confusion. U.S.C.A. Const.Amends. 1, 14.

[8] CONSTITUTIONAL LAW k274.2(1)
92k274.2(1)
Colorado statute requiring that initiative and referendum petitions be filed six months after titles, submission clause, and summary are fixed was reasonable, nondiscriminatory ballot access regulation and did not violate First and Fourteenth Amendments; requirement did not significantly burden ability of organized proponents to place measure on ballot, and served state's interests in preserving election integrity, maintaining orderly ballot, and limiting voter confusion. U.S.C.A. Const.Amends. 1, 14.

[8] STATUTES k302
361k302
Colorado statute requiring that initiative and referendum petitions be filed six months after titles, submission clause, and summary are fixed was reasonable, nondiscriminatory ballot access regulation and did not violate First and Fourteenth Amendments; requirement did not significantly burden ability of organized proponents to place measure on ballot, and served state's interests in preserving election integrity, maintaining orderly ballot, and limiting voter confusion. U.S.C.A. Const.Amends. 1, 14.

[8] STATUTES k342
361k342
Colorado statute requiring that initiative and referendum petitions be filed six months after titles, submission clause, and summary are fixed was reasonable, nondiscriminatory ballot access regulation and did not violate First and Fourteenth Amendments; requirement did not significantly burden ability of organized proponents to place measure on ballot, and served state's interests in preserving election integrity, maintaining orderly ballot, and limiting voter confusion. U.S.C.A. Const.Amends. 1, 14.

[9] CONSTITUTIONAL LAW k91
92k91
With regard to determination of whether state election law violates First and Fourteenth Amendment associational rights, when burden on plaintiff's rights is not significant and does not warrant strict scrutiny, state's asserted regulatory interests need only be sufficiently weighty to justify limitation imposed on plaintiff's rights, and court's inquiry does not require elaborate, empirical verification of weightiness of state's asserted justifications. U.S.C.A. Const.Amends. 1, 14.

[9] CONSTITUTIONAL LAW k274.1(2.1)

92k274.1(2.1)
With regard to determination of whether state election law violates First and Fourteenth Amendment associational rights, when burden on plaintiff's rights is not significant and does not warrant strict scrutiny, state's asserted regulatory interests need only be sufficiently weighty to justify limitation imposed on plaintiff's rights, and court's inquiry does not require elaborate, empirical verification of weightiness of state's asserted justifications. U.S.C.A. Const.Amends. 1, 14.

[10] CONSTITUTIONAL LAW k90.1(1.2)
92k90.1(1.2)
Strict scrutiny was not warranted in review of First Amendment challenge to Colorado statute requiring initiative and referendum petition circulators to execute affidavits averring validity of collected signatures, given lack of evidence in the record supporting challengers' claim that affidavit requirement significantly burdened political expression by decreasing pool of available circulators. U.S.C.A. Const. Amend. 1; West's C.R.S.A. Const. Art. 5, § 1(6); West's C.R.S.A. § 1-40-111(2).

[11] CONSTITUTIONAL LAW k90.1(1.2)
92k90.1(1.2)
Colorado statute requiring initiative and referendum petition circulators to execute affidavits averring validity of collected signatures did not violate First Amendment, given responsibility that circulators bore in ensuring integrity of elections involving ballot issues and that affidavit requirement was reasonable, nondiscriminatory restriction. U.S.C.A. Const.Amend. 1; West's C.R.S.A. Const. Art. 5, § 1(6); West's C.R.S.A. §§ 1-40-111(2), 1-40-116(a).

[11] STATUTES k302
361k302

Colorado statute requiring initiative and referendum petition circulators to execute affidavits averring validity of collected signatures did not violate First Amendment, given responsibility that circulators bore in ensuring integrity of elections involving ballot issues and that affidavit requirement was reasonable, nondiscriminatory restriction. U.S.C.A. Const.Amend. 1; West's C.R.S.A. Const. Art. 5, § 1(6); West's C.R.S.A. §§ 1-40-111(2), 1-40-116(a).

[11] STATUTES k342
361k342
Colorado statute requiring initiative and referendum petition circulators to execute affidavits averring validity of collected signatures did not violate First Amendment, given responsibility that circulators bore in ensuring integrity of elections involving ballot issues and that affidavit requirement was reasonable, nondiscriminatory restriction. U.S.C.A. Const.Amend. 1; West's C.R.S.A. Const. Art. 5, § 1(6); West's C.R.S.A. §§ 1-40-111(2), 1-40-116(a).

[12] ELECTIONS k5
144k5
State has strong, often compelling, interest in preserving integrity of its electoral system.

[13] CONSTITUTIONAL LAW k82(8)
92k82(8)
Colorado statute requiring initiative and referendum petition circulators to be registered electors was reviewable under First Amendment, even though petition process was not right guaranteed by Federal Constitution, inasmuch as Colorado's choice to reserve right did not leave state free to condition its use by impermissible First Amendment activity; it was irrelevant that restriction was based upon constitutional provision enacted by petition. U.S.C.A. Const.Amend. 1; West's C.R.S.A. § 1-40-112(1).

[14] CONSTITUTIONAL LAW k90.1(1.2)
92k90.1(1.2)
Exacting scrutiny was warranted in First Amendment challenge to Colorado statute requiring initiative and referendum petition circulators to be registered electors, in that registration requirement had discriminatory effect by barring nonregistered voters from circulating petitions, thereby excluding that group of persons from participating in core political speech, and limited number of voices to convey proponent's message, restricting audience and making collection of required number of signatures to place measure on ballot less likely. U.S.C.A. Const.Amend. 1; West's C.R.S.A. § 1-40-112(1).

[15] CONSTITUTIONAL LAW k213.1(1)
92k90(1)
Under equal protection analysis, classifications that impinge upon exercise of fundamental right are subject to most exacting scrutiny. U.S.C.A. Const.Amend. 14.

[16] CONSTITUTIONAL LAW k90(1)
92k90(1)
When statute allows some people to speak but not others, principles of equal protection and free speech are intertwined. U.S.C.A. Const.Amends. 1, 14.

[16] CONSTITUTIONAL LAW k225.1
92k225.1
When statute allows some people to speak but not others, principles of equal protection and free speech are intertwined. U.S.C.A. Const.Amends. 1, 14.

[17] CONSTITUTIONAL LAW k90.1(1.2)
92k90.1(1.2)
Colorado statute requiring initiative and referendum petition circulators to be registered electors was not narrowly tailored to serve compelling state interest and thus unconstitutionally

impinged on free expression; state's asserted interest in ensuring that circulators were residents so that regulatory system could be more easily policed could be more precisely achieved by simply imposing residency requirement for circulators. U.S.C.A. Const.Amend. 1; West's C.R.S.A. § 1-40-112(1).

[17] STATUTES k302
361k302
Colorado statute requiring initiative and referendum petition circulators to be registered electors was not narrowly tailored to serve compelling state interest and thus unconstitutionally impinged on free expression; state's asserted interest in ensuring that circulators were residents so that regulatory system could be more easily policed could be more precisely achieved by simply imposing residency requirement for circulators. U.S.C.A. Const.Amend. 1; West's C.R.S.A. § 1-40-112(1).

[17] STATUTES k342
361k342
Colorado statute requiring initiative and referendum petition circulators to be registered electors was not narrowly tailored to serve compelling state interest and thus unconstitutionally impinged on free expression; state's asserted interest in ensuring that circulators were residents so that regulatory system could be more easily policed could be more precisely achieved by simply imposing residency requirement for circulators. U.S.C.A. Const.Amend. 1; West's C.R.S.A. § 1-40-112(1).

[19] CONSTITUTIONAL LAW k82(2)
92k82(2)
Neither Fourteenth Amendment nor Bill of Rights is for adults alone. U.S.C.A. Const.Amends. 1-10, 14.

[19] CONSTITUTIONAL LAW k210(1)

92k210(1)
Neither Fourteenth Amendment nor Bill of Rights is for adults alone. U.S.C.A. Const.Amends. 1-10, 14.

[20] CONSTITUTIONAL LAW k82(8)
92k82(8)
While political candidacy is not fundamental right, voting is.

[21] CONSTITUTIONAL LAW k90.1(1.2)
92k90.1(1.2)
Maturity was reasonably related to Colorado's interest in preserving integrity of ballot issue elections, and therefore Colorado statute placing age restriction on circulators for initiative and referendum petitions was valid political speech regulation under First Amendment. U.S.C.A. Const.Amend. 1; West's C.R.S.A. § 1-40-112(1).

[21] STATUTES k302
361k30
Maturity was reasonably related to Colorado's interest in preserving integrity of ballot issue elections, and therefore Colorado statute placing age restriction on circulators for initiative and referendum petitions was valid political speech regulation under First Amendment. U.S.C.A. Const.Amend. 1; West's C.R.S.A. § 1-40-112(1).

[21] STATUTES k342
361k342
Maturity was reasonably related to Colorado's interest in preserving integrity of ballot issue elections, and therefore Colorado statute placing age restriction on circulators for initiative and referendum petitions was valid political speech regulation under First Amendment. U.S.C.A. Const.Amend. 1; West's C.R.S.A. § 1-40-112(1).

[22] CONSTITUTIONAL LAW k90.1(1.2)
92k90.1(1.2)

Exacting scrutiny applied in review of First Amendment challenge to Colorado statute requiring circulators for initiative and referendum petitions to wear personal identification badges; badge requirement could chill circulation and placed severe restriction on First and Fourteenth Amendment rights. U.S.C.A. Const.Amends. 1, 14; West's C.R.S.A. § 1-40-112(2).

[22] CONSTITUTIONAL LAW k274.2(1)
92k274.2(1)
Exacting scrutiny applied in review of First Amendment challenge to Colorado statute requiring circulators for initiative and referendum petitions to wear personal identification badges; badge requirement could chill circulation and placed severe restriction on First and Fourteenth Amendment rights. U.S.C.A. Const.Amends. 1, 14; West's C.R.S.A. § 1-40-112(2).

[23] CONSTITUTIONAL LAW k90.1(1)
92k90.1(1)
First Amendment affords broadest protection to political expression to assure unfettered interchange of ideas for bringing about of political and social changes desired by people. U.S.C.A. Const.Amend. 1.

[24] CONSTITUTIONAL LAW k90.1(1.1)
92k90.1(1.1)
Petition circulation is core political expression for First Amendment purposes. U.S.C.A. Const.Amend. 1.

[25] CONSTITUTIONAL LAW k90.1(1.2)
92k90.1(1.2)
Colorado statute requiring circulators for initiative and referendum petitions to wear personal identification badges unconstitutionally infringed on circulators' First Amendment rights; requirement imposed broad intrusion that discouraged truthful, accurate speech by those unwilling to wear badge

and applied without regard to character or strength of individual's interest in anonymity, and state had available other means to combat circulation fraud that were more narrowly tailored to serve its interests. U.S.C.A. Const.Amend. 1; West's C.R.S.A. § 1-40-112(2).

[25] STATUTES k302
361k302
Colorado statute requiring circulators for initiative and referendum petitions to wear personal identification badges unconstitutionally infringed on circulators' First Amendment rights; requirement imposed broad intrusion that discouraged truthful, accurate speech by those unwilling to wear badge and applied without regard to character or strength of individual's interest in anonymity, and state had available other means to combat circulation fraud that were more narrowly tailored to serve its interests. U.S.C.A. Const.Amend. 1; West's C.R.S.A. § 1-40-112(2).

[25] STATUTES k342
361k342
Colorado statute requiring circulators for initiative and referendum petitions to wear personal identification badges unconstitutionally infringed on circulators' First Amendment rights; requirement imposed broad intrusion that discouraged truthful, accurate speech by those unwilling to wear badge and applied without regard to character or strength of individual's interest in anonymity, and state had available other means to combat circulation fraud that were more narrowly tailored to serve its interests. U.S.C.A. Const.Amend. 1; West's C.R.S.A. § 1-40-112(2).

[26] CONSTITUTIONAL LAW k90(1)
92k90(1)
First Amendment does not permit state to sacrifice speech for efficiency. U.S.C.A. Const.Amend. 1.

[27] CONSTITUTIONAL LAW k82(8)
92k82(8)
Although state has every right to take strong measures to prevent dishonest activities by petition circulators, state may do so only by measures tailored to attack those problems within clearly recognized areas. U.S.C.A. Const.Amend. 1.

[28] CONSTITUTIONAL LAW k82(8)
92k82(8)
Court of Appeals would apply exacting scrutiny to Colorado statute imposing disclosure requirements on paid circulators of initiative and referendum petitions that was challenged as violative of First Amendment. U.S.C.A. Const.Amend. 1; West's C.R.S.A. § 1-40-121.

[29] CONSTITUTIONAL LAW k82(8)
92k82(8)
Provisions of Colorado statute requiring disclosure of information regarding paid circulators of initiative and referendum petitions, including names, addresses, and amount paid, and compelling detailed monthly disclosures were not narrowly tailored to serve Colorado's asserted interests in enabling signers to determine whether there was grassroots support for a measure and to discourage fraud, and therefore violated First Amendment. U.S.C.A. Const.Amend. 1; West's C.R.S.A. Const. Art. 5, § 1(2, 3); West's C.R.S.A. §§ 1-40-109(1), 1-40-110, 1-40-118, 1-40-121(1, 2), 1-40-130 to 1-40-132.

[29] STATUTES k302
361k302
Provisions of Colorado statute requiring disclosure of information regarding paid circulators of initiative and referendum petitions, including names, addresses, and amount paid, and compelling detailed monthly disclosures were not narrowly tailored to serve Colorado's asserted interests in enabling signers to determine whether there was

grassroots support for a measure and to discourage fraud, and therefore violated First Amendment. U.S.C.A. Const.Amend. 1; West's C.R.S.A. Const. Art. 5, § 1(2, 3); West's C.R.S.A. §§ 1-40-109(1), 1-40-110, 1-40-118, 1-40-121(1, 2), 1-40-130 to 1-40-132.

[29] STATUTES k342
361k342
Provisions of Colorado statute requiring disclosure of information regarding paid circulators of initiative and referendum petitions, including names, addresses, and amount paid, and compelling detailed monthly disclosures were not narrowly tailored to serve Colorado's asserted interests in enabling signers to determine whether there was grassroots support for a measure and to discourage fraud, and therefore violated First Amendment. U.S.C.A. Const.Amend. 1; West's C.R.S.A. Const. Art. 5, § 1(2, 3); West's C.R.S.A. §§ 1-40-109(1), 1-40-110, 1-40-118, 1-40-121(1, 2), 1-40-130 to 1-40-132.

[30] FEDERAL COURTS k613
170Bk613
Court of Appeals would not consider argument that statute requiring petition circulators to sign affidavits was unconstitutionally vague based on threat of civil penalty when challengers failed to address civil penalty in opening brief and did not appear to have raised issue before district court.

[30] FEDERAL COURTS k915
170Bk915
Court of Appeals would not consider argument that statute requiring petition circulators to sign affidavits was unconstitutionally vague based on threat of civil penalty when challengers failed to address civil penalty in opening brief and did not appear to have raised issue before district court.

[31] CONSTITUTIONAL LAW k274.2(1)
92k274.2(1)
Colorado statute requiring that circulators of initiative and referendum petitions read and understand law governing circulation was not unconstitutionally vague, in that statute, as interpreted by Colorado Supreme Court, explicitly endorsed lay circulator's own interpretation of understanding and did not invest law enforcement officers with sweeping, unrestrained discretion in enforcement. U.S.C.A. Const.Amend. 14; West's C.R.S.A. §§ 1-40-111(2), 1-40-130(1).

[31] STATUTES k302
361k302
Colorado statute requiring that circulators of initiative and referendum petitions read and understand law governing circulation was not unconstitutionally vague, in that statute, as interpreted by Colorado Supreme Court, explicitly endorsed lay circulator's own interpretation of understanding and did not invest law enforcement officers with sweeping, unrestrained discretion in enforcement. U.S.C.A. Const.Amend. 14; West's C.R.S.A. §§ 1-40-111(2), 1-40-130(1).

[31] STATUTES k342
361k342
Colorado statute requiring that circulators of initiative and referendum petitions read and understand law governing circulation was not unconstitutionally vague, in that statute, as interpreted by Colorado Supreme Court, explicitly endorsed lay circulator's own interpretation of understanding and did not invest law enforcement officers with sweeping, unrestrained discretion in enforcement. U.S.C.A. Const.Amend. 14; West's C.R.S.A. §§ 1-40-111(2), 1-40-130(1).

[32] FEDERAL COURTS k386

170Bk386
In reviewing Colorado statute challenged as unconstitutionally vague, Court of Appeals had to read statute as it had been interpreted by Colorado's highest court.

[33] CRIMINAL LAW k13.1(1)
110k13.1(1)
"Vagueness doctrine" requires that penal statute define criminal offense with sufficient definiteness that ordinary people can understand what conduct is prohibited and in manner that does not encourage arbitrary and discriminatory enforcement. U.S.C.A. Const.Amend. 14. See publication Words and Phrases for other judicial constructions and definitions.

[34] CONSTITUTIONAL LAW k82(8)
92k82(8)
Right to circulate initiative and referendum petitions is not unenumerated right protected by Ninth Amendment. U.S.C.A. Const.Amend. 9.

[35] CONSTITUTIONAL LAW k82(8)
92k82(8)
Colorado general assembly's attachment of safety clause to Senate bill regulating state's initiative and referendum petition process did not unconstitutionally restrict access to ballot, even though it precluded referendum challenge to bill, inasmuch as challengers remained free under initiative power to propose any measure by petition. U.S.C.A. Const.Amends. 1, 14; West's C.R.S.A. Const. Art. 5, § 1(2).

[35] STATUTES k303
361k303
Colorado general assembly's attachment of safety clause to Senate bill regulating state's initiative and referendum petition process did not unconstitutionally restrict access to

ballot, even though it precluded referendum challenge to bill, inasmuch as challengers remained free under initiative power to propose any measure by petition. U.S.C.A. Const.Amends. 1, 14; West's C.R.S.A. Const. Art. 5, § 1(2).

[35] STATUTES k343
361k343
Colorado general assembly's attachment of safety clause to Senate bill regulating state's initiative and referendum petition process did not unconstitutionally restrict access to ballot, even though it precluded referendum challenge to bill, inasmuch as challengers remained free under initiative power to propose any measure by petition. U.S.C.A. Const.Amends. 1, 14; West's C.R.S.A. Const. Art. 5, § 1(2).

***1095** Neil D. O'Toole, of Dallas, Holland, & O'Toole, P.C., Denver, CO, for plaintiffs.

Bill Orr, Denver, CO, pro se.

Maurice G. Knaizer, Deputy Attorney General (Gale A. Norton, Attorney General, with him on brief), Denver, CO, for defendants.

Before BRISCOE, SETH [FN*], and LUCERO, Circuit Judges.

FN* The late Honorable Oliver Seth, United States Senior Circuit Judge, heard oral argument in this case but did not participate in the final decision. The practice of this court permits the remaining two panel judges, if in agreement, to act as a quorum in resolving the appeal. United States v. Wiles, 106 F.3d 1516 (10th Cir.1997).

***1096** BRISCOE, Circuit Judge.

Plaintiffs brought this 42 U.S.C. § 1983 action challenging portions of Senate Bill 93-135, which regulates Colorado's initiative and referendum petition process. Plaintiffs argued S.B. 93-135 imposed restrictions that violated their rights under the First, Ninth, and Fourteenth Amendments to the United States Constitution. Plaintiffs appeal the district court's decision to uphold portions of S.B. 93-135, and defendants appeal the court's decision to strike down portions of S.B. 93-135. We agree with the district court's decision in all regards, except for its ruling upholding the requirement set forth in C.R.S.A. 1-40-112(1) that the circulator be a registered elector. We affirm in part and reverse in part.

I.

[1][2] Colorado allows its citizens to place issues on the ballot by petition. Colo. Const. art. V, § 1(1). The petition process consists of the initiative and the referendum. Colo. Const. art. V, § 1(2) & (3). A referendum is unavailable with respect to laws "necessary for the immediate preservation of the public peace, health, or safety." Colo. Const. art. V, § 1(3). Under the Colorado system, the general assembly has exclusive authority to determine whether a law is "necessary for the immediate preservation of the public peace, health, or safety." Van Kleeck v. Ramer, 62 Colo. 4, 156 P. 1108, 1110 (1916). Thus, when the general assembly attaches a "safety clause" to a law, a referendum on the law is precluded, although the right of initiative remains. See Cavanaugh v. Dept. of Social Services, 644 P.2d 1, 4 n. 6 (1982).

[3] The Colorado Constitution grants the general assembly the authority to adopt legislation "designed to prevent fraud, mistake, or other abuses" in the petition process. Committee for Better Health Care v. Meyer, 830 P.2d 884, 893 (Colo.1992) (en banc) (citing Colo. Const. art. V, § 1(2),

which provides petitions shall be filed "in such form as may be prescribed pursuant to law," and Colo. Const. art. VII, § 11, which grants general authority to regulate elections and elective franchise). The manner in which petitions may be circulated and by whom, and how they may be signed and by whom are regulated by C.R.S.A. §§ 1-40-101 et seq. (West Supp.1996). Senate Bill 93-135 rearranged and amended the article to "properly safeguard, protect, and preserve inviolate" the people's initiative and referendum power. C.R.S.A. § 1-40-101.

Prior to circulation, proponents of a ballot issue must submit a draft petition to the directors of the legislative council and the office of legal services for review and comment. C.R.S.A. § 1-40-105(1). A public hearing is held within two weeks of submission. Id. Following the hearing, the draft is presented to the title board, which prepares a title, submission clause, and summary. C.R.S.A. § 1-40-106. The proponents then have six months to file the petition with the Secretary of State. C.R.S.A. 1-40-108(1). Unless the petition contains the number of signatures required by the Colorado Constitution, it is of no effect when filed. C.R.S.A. § 1-40-109(1).

[4] Petition circulators collect the signatures and sign affidavits in which they aver, among other things, that each signer was a registered elector and was not paid to sign the petition. C.R.S.A. § 1-40-111(2). Circulators assume personal responsibility to prevent irregularities in the process. Loonan v. Woodley, 882 P.2d 1380, 1388 (Colo.1994) (en banc). If any circulator is found to have violated any provision of the article, the section of the petition circulated by that person "shall be deemed void." C.R.S.A. § 1-40-132(1).

Plaintiff American Constitutional Law Foundation, Inc., is a non-profit, public-interest organization that supports direct

democracy. The remaining plaintiffs are various individuals who, with the exception of William David Orr (a minor who desires to circulate petitions regarding educational vouchers) and Bill Orr (a qualified but unregistered elector), regularly participate in the ***1097** petition process as proponents and circulators. At the time of trial, Jon Baraga was circulating the Colorado Hemp Initiative and was also the statewide petition coordinator for the Hemp Initiative.

Along with several other plaintiffs, including American Constitutional Law Foundation, Baraga sought to repeal S.B. 93-135 by referendum. Plaintiffs had agreed to devote their resources in a joint effort, but the Secretary of State informed them by letter that a referendum on S.B. 93-135 was precluded because it contained a safety clause.

Plaintiffs brought suit claiming various portions of Article 40 violated the First and Fourteenth Amendments by restricting circulation to six months, requiring all circulators to sign an affidavit, restricting the right to circulate by age and voter registration, requiring all circulators to wear identification badges, requiring proponents to disclose the names of all paid circulators and the amounts they were paid, and attaching a safety clause to S.B. 93-135. They also asserted vagueness and Ninth Amendment claims. The court struck down the badge requirement and portions of the disclosure requirement after concluding they unduly burdened the First and Fourteenth Amendments. The court rejected plaintiffs' remaining claims.

II.

[5] We turn to plaintiffs' First Amendment issues. Plaintiffs argue the manner in which Colorado regulates the petition process is subject to exacting scrutiny because it significantly burdens political speech. They rely heavily on Meyer v. Grant, 486 U.S. 414, 108 S.Ct. 1886, 100 L.Ed.2d 425

(1988), in which proponents challenged a Colorado law making it unlawful to pay any consideration for the circulation of initiative or referendum petitions. Meyer acknowledged "circulation of a petition involves the type of interactive communication concerning political change that is appropriately described as 'core political speech.' " Id. at 421-22, 108 S.Ct. at 1891-92. The Court applied exacting scrutiny to strike down the challenged law, concluding it restricted political expression by limiting the number of voices conveying the proponents' message and making it less likely the proponents would gather the required number of signatures to place their issue on the ballot. Id. at 422-23, 108 S.Ct. at 1892-93.

Plaintiffs reason that because S.B. 93-135 restricts the manner in which citizens may circulate petitions, the instant case is indistinguishable from Meyer. They also cite Citizens Against Rent Control v. City of Berkeley, 454 U.S. 290, 102 S.Ct. 434, 70 L.Ed.2d 492 (1981), First Nat. Bank of Boston v. Bellotti, 435 U.S. 765, 98 S.Ct. 1407, 55 L.Ed.2d 707 (1978), and Buckley v. Valeo, 424 U.S. 1, 96 S.Ct. 612, 46 L.Ed.2d 659 (1976), as controlling authority. Each case, including Meyer, involved restrictions on expenditures to disseminate information on political issues. No such restrictions are involved here.

[6] A successful petition results in a question being submitted to the voters. Thus, the petition process is a ballot access vehicle, as well as an avenue for political expression. Unlike plaintiffs, we do not read Meyer to require that Colorado maintain a petition process that, in essence, allows unregulated access to the ballot. Indeed, such a reading would conflict with the general rule that states have the power to regulate their elections and access to their ballots. See, e.g., Timmons v. Twin Cities Area New Party, --- U.S. ----, ----, 117 S.Ct. 1364, 1366, 137 L.Ed.2d 589 (1997) ("States may enact reasonable regulations of parties,

elections, and ballots to reduce election-and campaign-related disorder."); Storer v. Brown, 415 U.S. 724, 730, 94 S.Ct. 1274, 1279, 39 L.Ed.2d 714 (1974) (recognizing need for substantial regulation of elections if they are to be fair, honest, and orderly). Cf. Tashjian v. Republican Party of Connecticut, 479 U.S. 208, 217, 107 S.Ct. 544, 549, 93 L.Ed.2d 514 (1986) (explaining "the Constitution grants to the States a broad power to prescribe the 'Times, Places, and Manner of holding Elections for Senators and Representatives,' Art. I, § 4, cl. 1, which power is matched by state control over the election process for state offices").

"Common sense, as well as constitutional law, compels the conclusion that government must play an active role in structuring elections." ***1098** Burdick v. Takushi, 504 U.S. 428, 433, 112 S.Ct. 2059, 2063, 119 L.Ed.2d 245 (1992). The Supreme Court has upheld "generally-applicable and evenhanded restrictions that protect the integrity of the electoral process itself." Anderson v. Celebrezze, 460 U.S. 780, 788 n. 9, 103 S.Ct. 1564, 1570, 75 L.Ed.2d 547 (1983). At least one other circuit has extended similar deference to regulations governing initiative petitions. See Taxpayers United for Assessment Cuts v. Austin, 994 F.2d 291, 297 (6th Cir.1993) (applying a more relaxed standard to "nondiscriminatory, content-neutral limitations on the [people's] ability to initiate legislation"); cf. Biddulph v. Mortham, 89 F.3d 1491, 1501 n. 10 (11th Cir.1996) (finding balancing of state interest against voter burden used in candidate-access cases not needed in initiative-access cases in upholding state initiative regulations against challenges of non-discriminatory burdensomeness). Colorado has a strong interest in ensuring both candidate elections and ballot issues are run fairly, efficiently, and honestly. See Timmons, --- U.S. at ----, 117 S.Ct. at 1357 ("States certainly have an interest in protecting the integrity, fairness, and efficiency of their ballots and election processes.").

To subject every petition regulation to exacting scrutiny would tie Colorado's hands in seeking to assure equitable and efficient elections on ballot issues. Timmons discussed a flexible standard for evaluating the constitutionality of laws regulating the electoral process:

> When deciding whether a state election law violates First and Fourteenth Amendment associational rights, this Court must weigh the character and magnitude of the burden the State's rule imposes on those rights against the interests the State contends justify that burden, and consider the extent to which the State's concerns make the burden necessary. Regulations imposing severe burdens must be narrowly tailored and advance a compelling state interest. Lesser burdens, however, trigger less exacting review, and a State's important regulatory interests will usually be enough to justify reasonable, nondiscriminatory restrictions.

--- U.S. at ----, 117 S.Ct. at 1366 (internal citations omitted). Thus, the rigorousness of our inquiry depends upon the extent to which the challenged law burdens plaintiffs' First and Fourteenth Amendment rights.

Plaintiffs challenge five restrictions--(1) the C.R.S.A. § 1-40-108(1) requirement that proponents file a petition with the secretary of state within six months of the date that the titles, submission clause, and summary have been fixed; (2) the C.R.S.A. § 1-40-111(2) requirement that circulators sign affidavits averring, essentially, that they have complied with Colorado law; (3) the C.R.S.A. § 1-40-112(1) restriction allowing petitions to be circulated only by registered electors at least eighteen years old; (4) the C.R.S.A. § 1-40-112(2) requirement that all circulators wear badges identifying

themselves by name and as either paid or volunteer; and (5) the C.R.S.A. § 1-40-112(1) and (2) disclosure requirement regarding paid circulators.

[7][8] C.R.S.A. § 1-40-108(1) provides, in part, that "[n]o petition for any ballot issue shall be of any effect unless filed with the secretary of state within six months from the date that the title, submission clause, and summary have been fixed and determined." The gist of plaintiffs' argument is that the six-month limit is arbitrary and excludes some measures from being placed on the ballot. Defendants argue the deadline is necessary to preserve an orderly ballot and, in any case, is not as onerous as other limits approved by the Supreme Court, cf. American Party of Texas v. White, 415 U.S. 767, 786-87, 94 S.Ct. 1296, 1308-09, 39 L.Ed.2d 744 (1974) (upholding Texas law allowing access to ballot if minor party candidate files petition within 55 days of general primary election).

The six-month deadline is a neutral ballot access regulation. By definition, ballot access restrictions prevent some measures from being placed on the ballot. However, this feature is insufficient by itself to require strict scrutiny. Cf. Burdick, 504 U.S. at 433, 112 S.Ct. at 2063 (noting "the mere fact that a State's system 'creates barriers ... tending to limit the field of candidates from which voters might choose ... does not of itself compel close scrutiny' "). The court found, ***1099** and the record indicates, that by planning and proper preparation of the ballot, title proponents enjoy ample time to circulate petitions.

[9] Although some measures might fare better under a longer or indeterminate period, the current deadline is not a significant burden on the ability of organized proponents to place a measure on the ballot. "[T]he State's asserted regulatory interests [need only be] 'sufficiently weighty to justify the limitation' imposed on the [Plaintiffs'] rights."

Timmons, --- U.S. at ----, 117 S.Ct. at 1366. Our inquiry does not require "[e]laborate, empirical verification of weightiness" of the State's asserted justifications. Id. Defendants assert several interests: preserving the integrity of the state's elections, maintaining an orderly ballot, and limiting voter confusion. The regulation here advances these interests by establishing a reasonable window in which proponents must demonstrate support for their causes. The six-month deadline is a reasonable, nondiscriminatory ballot access regulation; it does not offend the First and Fourteenth Amendments.

[10] C.R.S.A. § 1-40-111(2) requires circulators to sign specifically described affidavits and is "generally-applicable" (Celebrezze, 460 U.S. at 788 n. 9, 103 S.Ct. at 1570 n. 9). It provides:

> To each petition section shall be attached a signed, notarized, and dated affidavit executed by the registered elector who circulated the petition section, which shall include his or her printed name, the address at which he or she resides, including the street name and number, the city or town, the county, and the date he or she signed the affidavit; that he or she has read and understands the laws governing the circulation of petitions; that he or she was a registered elector at the time the section of the petition was circulated and signed by the listed electors; that he or she circulated the section of the petition; that each signature thereon was affixed in the circulator's presence; that each signature thereon is the signature of the person whose name it purports to be; that to the best of the circulator's knowledge and belief each of the persons signing the petition section was, at the time of signing, a registered elector; and

> that he or she has not paid or will not in the future pay and that he or she believes that no other person has paid or will pay, directly or indirectly, any money or other thing of value to any signer for the purpose of inducing or causing such signer to affix his or her signature to the petition. The secretary of state shall not accept for filing any section of a petition that does not have attached thereto the notarized affidavit required by this section. Any signature added to a section of a petition after the affidavit has been executed shall be invalid.

Section 1-40-111(2) is rooted in the Colorado Constitution, which requires circulators to sign affidavits averring that the signatures collected are valid. Colo. Const. art. V, § 1(6). Plaintiffs argue § 1-40-111(2) is unduly burdensome and unconstitutionally vague. We address their vagueness argument in part III of this opinion. There is little, if anything, in the record to support plaintiffs' claim that the affidavit requirement [FN1] significantly burdens political expression by decreasing the pool of available circulators. Hence, exacting scrutiny is not required.

> FN1. We review here only the requirement that the circulator execute the affidavit. We separately consider and strike down the requirement reflected in the content of the affidavit that the circulator be a registered elector.

[11][12] A state has a strong, often compelling, interest in preserving the integrity of its electoral system. See Timmons, --- U.S. at ----, 117 S.Ct. at 1366. Circulators play an important role in ballot issue elections--they are solely responsible for gathering the number and type of signatures required to place an issue on the ballot. Indeed,

as we have previously noted, circulators are, in effect, entrusted with personal responsibility to prevent irregularities in the petition process. See Loonan, 882 P.2d at 1388; Committee on Better Health Care, 830 P.2d at 894; C.R.S.A. § 1-40-116(a). The affidavits "ensure that circulators, who possess various degrees of interest in a particular initiative, ***1100** exercise special care to prevent mistake, fraud, or abuse in the process of obtaining thousands of signatures of only registered electors throughout the state." Loonan, 882 P.2d at 1388-89. Given the responsibility circulators bear in ensuring the integrity of elections involving ballot issues, and given the fact that the affidavit requirement is a reasonable, nondiscriminatory restriction, we conclude plaintiffs' challenge fails.

[13] Section 1-40-112(1) prescribes who may circulate: "No section of a petition for any initiative or referendum measure shall be circulated by any person who is not a registered elector and at least eighteen years of age at the time the section is circulated." The district court held 1-40-112(1) was unreviewable because the petition process is not a right granted by the United States Constitution. In Meyer, we rejected that argument, explaining even though the initiative and referendum process is not guaranteed by the United States Constitution, Colorado's choice to reserve it does not leave the state free to condition its use by impermissible restraints on First Amendment activity. 828 F.2d at 1456. Cf. Taxpayers United for Assessment Cuts, 994 F.2d at 295 (concluding although federal Constitution does not require a state to create initiative procedure, if it does, it cannot impose restrictions that violate Constitution); Henry v. Connolly, 910 F.2d 1000, 1004 (1st Cir.1990) (same). Furthermore, it is irrelevant that the statutory restriction is based upon a constitutional provision enacted by petition. The voters may no more violate the United States Constitution by enacting a ballot issue than the general assembly

may by enacting legislation. Cf. Citizens Against Rent Control, 454 U.S. at 295, 102 S.Ct. at 436.

[14][15][16] Plaintiffs argue, essentially, that 1-40-112(1) is discriminatory. Under an equal protection analysis, classifications that impinge upon the exercise of a fundamental right are subject to the most exacting scrutiny. See, e.g., Clark v. Jeter, 486 U.S. 456, 461, 108 S.Ct. 1910, 1914, 100 L.Ed.2d 465 (1988). Plaintiffs do not bring an equal protection claim; nevertheless, when a statute allows some people to speak but not others, the principles of equal protection and free speech are intertwined. Rotunda & Nowak, Treatise on Constitutional Law: Substance and Procedure 2d § 20.11, p. 48. Cf. Police Department of City of Chicago v. Mosley, 408 U.S. 92, 94-95, 92 S.Ct. 2286, 2289-90, 33 L.Ed.2d 212 (1972).

The registration requirement has a discriminatory effect. It bars persons who are not registered voters from circulating petitions, thereby excluding that group of persons from participating in core political speech. See Meyer, 486 U.S. at 421-22, 108 S.Ct. at 1891-92. Colorado acknowledges there are at least 400,000 qualified but unregistered voters in the state. The mandatory exclusion of unregistered circulators also limits the number of voices to convey the proponent's message, limiting the audience the proponents can reach and making it less likely they will be able to gather the required number of signatures to place a measure on the ballot. Cf. Meyer, 486 U.S. at 422-23, 108 S.Ct. at 1892-93. Consequently, we apply exacting scrutiny.

[17] Colorado fails to identify a compelling state interest to which its registration requirement is narrowly tailored. The state attempts to justify the registration requirement by arguing it has a compelling interest in ensuring circulators are residents so the regulatory system may be more easily policed (the secretary's authority to issue subpoenas to

circulators does not extend beyond Colorado's borders) and circulators who violate the law may be more easily prosecuted. Even if we assume the state's potentially compelling interest in preserving the integrity of its elections requires all circulators to be residents, a question we need not decide, the registration requirement is not narrowly tailored to ensure that circulators are residents. Clearly, a large number of Colorado residents are not registered voters. The state's asserted interest could be more precisely achieved by simply imposing a residency requirement for circulators. Because Colorado's requirement that circulators be registered voters is not narrowly tailored to a compelling state interest, we find it unconstitutionally impinges on free expression and reverse the district court.

***1101** [18][19][20][21] Section 1-40-112(1) also places an age restriction on circulation. We are mindful that "neither the Fourteenth Amendment nor the Bill of Rights is for adults alone." In re Gault, 387 U.S. 1, 13, 87 S.Ct. 1428, 1436, 18 L.Ed.2d 527 (1967). We also recognize, however, that age commonly is used as a proxy for maturity. See, e.g., U.S. Const. art I, § 2, P 2 (establishing age requirement for election to House of Representatives); § 3, P 3 (Senate); art. II, § 1, P 4 (President). Cf. U.S. Const. amend. XXVI (extending vote to eighteen-year-olds). Not surprisingly, Colorado places age restrictions on voting and candidacy. Colo. Const. art. 5, § 4 (establishing age requirement for members of General Assembly); art. 7, § 1 (establishing age requirement for voters). While candidacy is not a fundamental right, voting is. Cf. Burdick, 504 U.S. at 433, 112 S.Ct. at 2063 (voting); Bullock v. Carter, 405 U.S. 134, 142-43, 92 S.Ct. 849, 855-56, 31 L.Ed.2d 92 (1972) (candidacy). Subject to the Twenty-sixth Amendment, it seems states generally may place an age requirement on the right to vote without having to satisfy exacting scrutiny. Cf. Hill v. Stone, 421 U.S. 289, 297, 95 S.Ct. 1637, 1642, 44 L.Ed.2d 172 (1975) (examining challenge

unrelated to age). Plaintiffs have not demonstrated that persons under eighteen have a stronger interest in circulating than they do in voting. The age requirement is a neutral restriction that imposes only a temporary disability--it does not establish an absolute prohibition but merely postpones the opportunity to circulate. Exacting scrutiny is not required. Because maturity is reasonably related to Colorado's interest in preserving the integrity of ballot issue elections, plaintiffs' First Amendment challenge fails. Cf. Stiles v. Blunt, 912 F.2d 260, 267 (8th Cir.1990) (maturity and life experience significant factors in setting minimum age for candidates), cert. denied 499 U.S. 919, 111 S.Ct. 1307, 113 L.Ed.2d 241 (1991).

[22] Section 1-40-112(2) requires each circulator to wear a personal identification badge:

> "(a) All circulators who are not to be paid for circulating petitions concerning ballot issues shall display an identification badge that includes the words "VOLUNTEER CIRCULATOR" in bold-faced type which is clearly legible and the circulator's name.
>
> (b) All circulators who are to be paid for circulating petitions concerning ballot issues shall display an identification badge that includes the words "PAID CIRCULATOR" in bold-faced type which is clearly legible, the circulator's name, and the name and telephone number of the individual employing the circulator."

A violation of 1-40-112(2) could result in the signatures collected by a circulator being declared void, C.R.S.A. 1-40-132, and possibly even criminal prosecution, C.R.S.A. 1-40-130(2). The district court held that 1-40-112(2) infringes the

right to anonymous political expression and struck it down in its entirety. The court found the badge requirement discourages people from circulating because people are reluctant to wear badges, especially when they advocate unpopular causes.

Defendants attempt to avoid exacting scrutiny. First, they argue the badge requirement has been upheld by the Supreme Court, citing footnotes from Riley v. National Federation of the Blind of North Carolina, 487 U.S. 781, 799 n. 11, 108 S.Ct. 2667, 2679, 101 L.Ed.2d 669 (1988), and Martin v. City of Struthers, 319 U.S. 141, 148 n. 14, 63 S.Ct. 862, 865, 87 L.Ed. 1313 (1943). Riley invalidated a North Carolina law restricting the manner in which professional fundraisers could solicit charitable contributions, and Martin invalidated a city ordinance prohibiting knocking on the door or ringing the doorbell of any residence for the purpose of distributing literature. Neither case addressed a law similar to 1-40-112(2) and neither held that a state may condition political expression on the wearing of an identification badge. Further, the footnotes on which defendants rely are dicta. See, e.g. Riley, 487 U.S. at 803, 108 S.Ct at 2681 (Scalia, J., concurring) (noting footnote 11 addresses situation not before Court).

[23][24] Second, defendants argue exacting scrutiny is unwarranted because there is no constitutionally protected right to circulate anonymously. However, "[t]he First ***1102 Amendment** affords the broadest protection to ... political expression in order '[t]o assure [the] unfettered interchange of ideas for the bringing about of political and social changes desired by the people.'" Buckley, 424 U.S. at 14, 96 S.Ct. at 632 (quoting Roth v. United States, 354 U.S. 476, 484, 77 S.Ct. 1304, 1308, 1 L.Ed.2d 1498 (1957)). It is also clear that circulation is core political expression. Meyer, 486 U.S. at 421-22, 108 S.Ct. at 1891-92. The Supreme Court has protected anonymous political expression and

association. See, e.g., McIntyre v. Ohio Elections Com'n, 514 U.S. 334, 115 S.Ct. 1511, 131 L.Ed.2d 426 (1995) (invalidating law restricting anonymous election-related hand billing); Talley v. California, 362 U.S. 60, 63, 80 S.Ct. 536, 538, 4 L.Ed.2d 559 (1960) (invalidating law prohibiting distribution of "any handbill in any place under any circumstances" unless it contains names and addresses of those who prepared, distributed, or sponsored it); Bates v. City of Little Rock, 361 U.S. 516, 80 S.Ct. 412, 4 L.Ed.2d 480 (1960) (striking down ordinance that organization disclose its membership list); NAACP v. Alabama, 357 U.S. 449, 78 S.Ct. 1163, 2 L.Ed.2d 1488 (1958) (overturning civil contempt for failing to disclose membership list). The Court protects anonymity because "fear of reprisal might deter perfectly peaceful discussions of public matters of importance." Talley, 362 U.S. at 65, 80 S.Ct. at 539. As the Court has explained, our nation's tradition of anonymous political expression "is perhaps best exemplified by the secret ballot, the hard-won right to vote one's conscience without fear of retaliation." McIntyre, 514 U.S. at 342, 115 S.Ct. at 1517.

On the other hand, the Court also has upheld disclosure requirements that deprive some speakers of anonymity. Buckley, 424 U.S. at 60-84, 96 S.Ct. at 654-65 (upholding disclosure requirements of Federal Election Campaign Act of 1971). Cf. First Nat. Bank of Boston, 435 U.S. at 792 n. 32, 98 S.Ct. at 1424 n. 32 (noting source of corporate political advertising may be required as means of disclosure). Although exhaustive, the disclosures examined in Buckley are not akin to the identification badges at issue here. The disclosures in Buckley were limited to candidate elections, were triggered only where the speaker spent money, and were further removed from the moment of speech. Even in Buckley, however, the Court acknowledged that "significant encroachments on First Amendment rights of the sort that compelled disclosure imposes cannot be justified by a mere

showing of some legitimate governmental interest." Buckley, 424 U.S. at 64, 96 S.Ct. at 656. Thus, the Court subjected the disclosure requirements to exacting scrutiny. Id. at 64-69, 96 S.Ct. at 656-58. To the extent defendants attempt to avoid exacting scrutiny, their second argument is unpersuasive.

Third, defendants argue circulators have only a diminished interest in anonymity because they sign affidavits that are attached to the petition, which is available to the public. See § 1-40-118(1). Information contained on an identification badge is much more accessible than information attached to a filed petition and, unlike the affidavit requirement, the badge requirement forces circulators to reveal their identities at the same time they deliver their political message. The badge requirement operates when the reaction to their message may be the most intense, emotional, and unreasoned. Thus, as opposed to the affidavit requirement, the badge requirement deprives circulators of their anonymity at the precise moment their interest in anonymity is greatest. The record amply supports the court's finding that the badge requirement chills circulation. It places a "severe" restriction on First and Fourteenth Amendment rights requiring exacting scrutiny.

[25][26][27] Defendants argue the badge requirement serves a compelling interest, aiding the state's efforts to prevent fraud by enabling the public to identify individuals who make false or fraudulent statements while circulating. Thus, defendants essentially argue the badges enable the state to pursue more efficiently individuals who engage in misconduct. Although the state has a compelling interest in preserving the integrity of its elections (see, e.g., Eu v. San Francisco Democratic Com., 489 U.S. 214, 231, 109 S.Ct. 1013, 1024, 103 L.Ed.2d 271 (1989)), "the First Amendment does not permit the State to sacrifice speech for efficiency" ***1103** (Riley, 487 U.S. at 795, 108 S.Ct. at

2676). Additionally, "the risk of fraud or corruption, or the appearance thereof, is more remote at the petition stage of an initiative than at the time of balloting." Meyer, 486 U.S. at 427, 108 S.Ct. at 1894. Therefore, "[a]lthough the State has every right to take strong measures to prevent ... dishonest activities by petition circulators, the State may do so only by measures tailored to attack those problems within clearly recognized areas permitted by the Supreme Court." Grant, 828 F.2d at 1454.

Ohio claimed the same general interest in identifying individual instances of misconduct in McIntyre, 514 U.S. 334, 115 S.Ct. 1511, 131 L.Ed.2d 426. In McIntyre, the petitioner challenged an Ohio law prohibiting, among other things, distribution of any publication designed to promote the adoption or defeat of a ballot issue unless the publication contained the name of the person who was responsible for it. The purpose of the law was to identify persons who distributed materials containing false statements. The Court applied exacting scrutiny and invalidated the law because it was not narrowly tailored to serve Ohio's asserted interest in preventing fraud.

Circulating a petition is akin to distributing a handbill. In both instances, an individual identifies himself or herself with a specific viewpoint by personally disseminating it. Just as those who distribute handbills have a strong interest in remaining anonymous, so do circulators. As the Supreme Court has explained:

> Anonymity is a shield from the tyranny of the majority. It thus exemplifies the purpose behind the Bill of Rights, and of the First Amendment in particular: to protect unpopular individuals from retaliation--and their ideas from suppression--at the hand of an intolerant society. The right to remain anonymous may

> be abused when it shields fraudulent conduct. But political speech by its nature will sometimes have unpalatable consequences, and, in general, our society accords greater weight to the value of free speech than to the dangers of its misuse.

McIntyre, 514 U.S. at 356, 115 S.Ct. at 1524 (internal citation omitted).

Defendants argue the badge requirement is the type of "limited identification requirement" McIntyre suggested might be constitutional. Defendants rely on Buckley, which upheld compelled disclosure of certain expenditures and their uses in candidate elections. Requiring circulators to identify themselves against their will is more intrusive than simply disclosing an expenditure. Whereas contributing to a campaign is only a generalized demonstration of support, circulating a petition, and the advocacy it entails, more clearly identifies the circulator with the precisely defined point of view he or she is personally encouraging others to support. Spending money to advance an unpopular viewpoint is a more detached form of support and is less likely to precipitate retaliation than circulating a petition. Cf. McIntyre, 514 U.S. at 354, 115 S.Ct. at 1523 (distinguishing expenditure from distributing handbill).

As previously noted, defendants argue the badge requirement is necessary to enable the state to identify and punish fraud. Section 1-40-112(2) is not narrowly tailored to serve the state's asserted interest. Conditioning circulation upon wearing an identification badge is a broad intrusion, discouraging truthful, accurate speech by those unwilling to wear a badge, and applying regardless of the character or strength of an individual's interest in anonymity. Additionally, the badges are but one part of the state's comprehensive scheme to combat circulation fraud. Article 40 provides

other tools that are much more narrowly tailored to serve the state's interest. See C.R.S.A. §§ 1-40-130, 1-40-131 (criminalizing certain conduct); 1-40-132 (authorizing secretary of state to void a petition). See also C.R.S.A. §§ 1-40-110 (requiring every page to contain a warning to potential signers); 1-40-118 (providing for written protest). Although requiring circulators to wear identification badges may enhance the state's ability to impose other penalties, it does not follow, and it is unestablished, that the badges are a necessary component of the state's arsenal. Cf. Burson v. Freeman, 504 U.S. 191, 199, 112 S.Ct. 1846, 1851, 119 L.Ed.2d 5 (1992) (explaining that "[t]o survive strict scrutiny ... a State ***1104** must do more than assert a compelling state interest--it must demonstrate that its law is necessary to serve the asserted interest").

Because we find the badge requirement unconstitutionally infringes on circulators' First Amendment rights by its identification requirements, and because plaintiffs' arguments and evidence focus entirely on this element of the badge requirement, we express no opinion regarding whether the additional requirements that the badge disclose whether the circulator is paid or a volunteer, and if paid, by whom, would pass constitutional muster standing alone.

[28][29] Section 1-40-121 places disclosure requirements on paid circulators and is "generally-applicable" (Celebrezze, 460 U.S. at 788 n. 9, 103 S.Ct. at 1570 n. 9). It provides as follows:

> (1) The proponents of the petition shall file with the official who receives filings under the "Campaign Reform Act of 1974", article 45 of this title, for the election the name, address, and county of voter registration of all circulators who were paid to circulate any section of the petition, the amount paid per signature,

and the total amount paid to each circulator. The filing shall be made at the same time the petition is filed with the secretary of state. Any payment made to circulators is an expenditure under article 45 of this title.

(2) The proponents of the petition shall sign and file monthly reports with the secretary of state, due ten days after the last day of each month in which petitions are circulated on behalf of the proponents by paid circulators. Monthly reports shall set forth the following:

(a) The names of the proponents;

(b) The name and the residential and business addresses of each of the paid circulators;

(c) The name of the proposed ballot measure for which petitions are being circulated by paid circulators; and

(d) The amount of money paid and owed to each paid circulator for petition circulation during the month in question.

The court invalidated 1-40-121(1) to the extent it requires the proponents of a petition to provide "the name, address, and county of voter registration of all circulators who were paid to circulate any section of the petition" in reporting the amounts paid to circulators. The court invalidated 1-40-121(2) in its entirety. We apply exacting scrutiny. See Buckley, 424 U.S. at 64, 96 S.Ct. at 656.

Section 1-40-121 is a broad disclosure provision. It compels disclosure of the name of a paid circulator regardless of the amount he or she received to circulate. The State analogizes

1-40-121 to the Federal Election Campaign Act of 1971 disclosure provision upheld in Buckley. Buckley acknowledged that "compelled disclosure, in itself, can seriously infringe on privacy of association and belief guaranteed by the First Amendment." Id. at 64, 96 S.Ct. at 656. However, Buckley identified three interests "sufficiently important to outweigh" the infringement on the "privacy of association and belief guaranteed by the First Amendment." Id. at 64, 96 S.Ct. at 656. First, campaign finance disclosure informs voters of the candidate's place in the political spectrum and alerts them "to the interests to which a candidate is most likely to be responsive." Id. at 67, 96 S.Ct. at 657. Second, "disclosure requirements deter actual corruption and avoid the appearance of corruption." Id. Third, "disclosure requirements are an essential means of gathering the data necessary to detect violations of the contribution limitations." Id. at 68, 96 S.Ct. at 658.

Unlike the statute in Buckley, 1-40-121 imposes no monetary threshold--a circulator must be identified by name and address regardless of whether he or she received 10 cents or $10,000. Cf. Brown v. Socialist Workers '74 Campaign Committee, 459 U.S. 87, 93, 103 S.Ct. 416, 420, 74 L.Ed.2d 250 (1982). The statutes at issue in Buckley and Brown are dissimilar from 1-40-121 for another reason--they regulate candidate elections but 1-40-121 does not. Cf. Brown, 459 U.S. at 89 n. 2, 103 S.Ct. at 419 n. 2 and Buckley, 424 U.S. at 63, 96 S.Ct. at 655 with C.R.S.A § 1-40-121. Section 1-40-121 applies only to the circulation of initiative and referendum petitions. None of the three interests the Court found sufficient in Buckley are relevant here. The first and third ***1105** are inapplicable because 1-40-121 addresses expenditures, not contributions. The second is inapplicable because "quid pro quo" concerns are not present here. Cf. Bellotti, 435 U.S. at 790, 98 S.Ct. at 1423 (explaining "[r]eferenda are held on issues, not on candidates for public office. The risk of corruption

perceived in cases involving candidate elections ... simply is not present in a popular vote on a public issue."). Defendants' attempts to analogize 1-40-121 to Buckley are unpersuasive.

Defendants argue 1-40-121 survives even exacting scrutiny because it is necessary to enable signers to determine whether there is "grassroots" support for a measure and to discourage fraud. Neither 1-40-121(1) nor 1-40-121(2) is narrowly tailored to serve these interests.

The court struck down 1-40-121(1) to the extent it compels disclosure of information specific to each paid circulator. Much like requiring identification badges, compelling the disclosure of the identities of every paid circulator chills paid circulation, a constitutionally protected exercise. Although the fact that disclosure is made at the time the proponents file the petition lessens the burden of the disclosure, the law fails exacting scrutiny because the interests asserted by the state either already are or can be protected by less intrusive measures. Cf. Grant, 828 F.2d at 1452 (Colorado's ban on paid circulators failed exacting scrutiny because interests Colorado asserted either were or could be protected by less intrusive measures).

Defendants' first asserted interest, informing the electorate whether a measure has grassroots support, is directly and specifically protected by the constitutional requirement that to reach the ballot an initiative or referendum petition must be signed "by registered electors in an amount equal to at least five percent of the total number of votes cast for all candidates for the office of secretary of state at the previous general election." Colo. Const. art. V, § 1(2) & (3); C.R.S.A. § 1-40-109(1). As limited by the court, 1-40-121(1) requires proponents to disclose the amount spent per signature and, thus, the total amount paid to circulators. To the extent the amount of money spent has some correlation

to the level of grassroots support, this information allows voters to compare the level of support enjoyed by different issues. Requiring proponents to provide a detailed roster of all who were paid to circulate compromises the expressive rights of paid circulators, but sheds little light on the relative merit of the ballot issue.

Defendants' second asserted interest, discouraging fraud, also is protected by a battery of more narrowly tailored measures. See C.R.S.A. §§ 1-40-130, -131 (criminalizing certain misconduct during circulation); 1-40-132 (authorizing secretary of state to void petition). See also C.R.S.A. § 1-40-110 (requiring every page to contain warning to potential signers); § 1-40-118 (providing for written protest). The State has made no showing that these mechanisms are inadequate. Cf. Colorado Republican Federal Campaign Committee v. Federal Election Com'n, --- U.S. ----, ----, 116 S.Ct. 2309, 2317, 135 L.Ed.2d 795 (1996). Defendants have not shown the disclosure is necessary to discourage fraud.

Section 1-40-121(2) compels detailed monthly disclosures. The court invalidated it in its entirety. Defendants assert the same two interests: grassroots support and fraud. Compelling detailed monthly disclosures while the petition is being circulated chills speech by forcing paid circulators to surrender the anonymity enjoyed by their volunteer counterparts. In that the disclosures are contemporaneous with circulation, 1-40-121(2) is more akin to the badge requirement than 1-40-121(1). Section 1-40-121(2) is a broad intrusion only loosely related to the interests it is purported to serve. Like 121(1), 121(2) fails exacting scrutiny because it is not narrowly tailored to serve either of defendants' asserted interests.

III.

[30][31] Plaintiffs argue 1-40-111(2), which requires circulators to sign specifically described affidavits, is unconstitutionally vague. Failure to comply with 1-40-111(2) may result in criminal prosecution. C.R.S.A. § 1-40-130(1). Plaintiffs' opening brief on ***1106** appeal addresses only the chilling effect resulting from the threat of criminal prosecution. Their reply brief, however, expands the discussion to include the civil penalty set forth in 1-40-132(1). Because their opening brief did not address the civil penalty, and because this argument does not appear to have been before the district court, we will not consider it.

In Grayned v. City of Rockford, 408 U.S. 104, 108-09, 92 S.Ct. 2294, 2298-99, 33 L.Ed.2d 222 (1972), the Court explained, generally, as follows:

> It is a basic principle of due process that an enactment is void for vagueness if its prohibitions are not clearly defined. Vague laws offend several important values. First, because we assume that man is free to steer between lawful and unlawful conduct, we insist that laws give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly. Vague laws may trap the innocent by not providing fair warning. Second, if arbitrary and discriminatory enforcement is to be prevented, laws must provide explicit standards for those who apply them. A vague law impermissibly delegates basic policy matters to policemen, judges, and juries for resolution on an ad hoc and subjective basis, with the attendant dangers of arbitrary and discriminatory application. Third, but related, where a vague statute "abut(s) upon sensitive areas of basic First Amendment freedoms," it "operates to

> inhibit the exercise of (those) freedoms." Uncertain meanings inevitably lead citizens to "steer far wider of the unlawful zone" ... than if the boundaries of the forbidden areas were clearly marked.

Plaintiffs argue, essentially, that 1-40-111(2) is so difficult to understand that it inhibits circulation and, therefore, abuts upon political expression. They specifically attack the requirement that circulators "read and understand" the law governing circulation.

[32] We must read the statute as it has been interpreted by Colorado's highest court. United States v. Gaudreau, 860 F.2d 357, 361 (10th Cir.1988). In Loonan v. Woodley, 882 P.2d 1380 (Colo.1994) (en banc), the Colorado Supreme Court considered and rejected a vagueness challenge directed at the "read and understand" requirement. Plaintiffs argued, in part, that the requirement was vague because lay circulators had no way to determine whether their "understanding" was legally sufficient. Loonan dismissed their argument, explaining as follows:

> Under the statute, a circulator may be penalized only for signing the affidavit without "reasonably believing that the statements made in the affidavit are true." § 1-40-130(1)(d). Understanding [the law governing circulation] ... requires nothing more than that a circulator believe that he or she knows what a circulator can and cannot do. This prohibition would ensnare only those circulators who made no attempt to understand their duties. The "read and understand" language mandated in the circulator's affidavit accordingly provides fair notice of the prohibition because

it accommodates the subjective belief of the circulator.

882 P.2d at 1390.

[33] The vagueness doctrine "requires that a penal statute define the criminal offense with sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement." Kolender v. Lawson, 461 U.S. 352, 357, 103 S.Ct. 1855, 1857, 75 L.Ed.2d 903 (1983). We are mindful of the special concerns that attach when a criminal law is alleged to impinge upon a First Amendment right. See, e.g., NAACP v. Button, 371 U.S. 415, 433, 83 S.Ct. 328, 338, 9 L.Ed.2d 405 (1963); Gaudreau, 860 F.2d at 360. Nevertheless, in light of Loonan, we conclude the statute is sufficiently definite because it "explicitly endorses the lay circulator's own interpretation of 'understanding,' " Loonan, 882 P.2d at 1390, and does not, as plaintiffs seem to argue, invest law enforcement officers with sweeping, unrestrained discretion.

IV.

[34] The Ninth Amendment provides that "[t]he enumeration in the Constitution, of certain rights, shall not be construed to deny ***1107** or disparage others retained by the people." U.S. Const. amend. IX. Plaintiff Bill Orr, appearing pro se, argues the right to circulate initiative and referendum petitions is an unenumerated right protected by the Ninth Amendment. He implicitly argues it is incorporated in the Fourteenth Amendment. He points to no controlling authority in support. His argument is unpersuasive.

V.

[35] The general assembly attached a safety clause to S.B. 93-135. Plaintiffs moved at pretrial to preliminarily enjoin S.B. 93-135, arguing the general assembly unconstitutionally attached the safety clause. The court denied the motion. We affirmed, explaining in part as follows: "Although the attachment of the safety clause to SB 93-135 precludes a referendum challenge, it does not unconstitutionally restrict plaintiffs' access to the ballot. Plaintiffs remain free, under the initiative power reserved to the people by the Colorado Constitution, art. V, § 1(2), to propose any measure by petition." American Constitutional Law Foundation v. Meyer, 33 F.3d at 63. We remain convinced, for substantially the same reasons stated in our earlier order, that plaintiffs' arguments against the constitutionality of the safety clause are without merit.

AFFIRMED IN PART and REVERSED IN PART.

END OF DOCUMENT

APPENDIX B

Copyright (c) West Publishing Co. 1996 No claim to original U.S. Govt. works.

870 F. Supp. 995, American Constitutional Law Foundation, Inc. v. Meyer, (D.Colo. 1994)

AMERICAN CONSTITUTIONAL LAW FOUNDATION, INC., David Aitkens, Jon Baraga, Craig Eley, Jack Hawkins, Lonnie Haynes, Alden Krautz, Bill Orr, individually and as the Parent and Guardian of William David Orr, Plaintiffs, v. Natalie MEYER, individually, and as Secretary of State for the State of Colorado, Defendant.

Civ. A. No. 93-M-1467.

United States District Court,
D. Colorado.
Nov. 23, 1994.

Public interest organization and Colorado residents brought action for declaratory and injunctive relief from restrictions on circulation and submissions of petitions to propose state laws and constitutional amendments. The District Court, Matsch, Chief Judge, held that: (1) provision compelling circulators to wear identification badges was unconstitutional burden on political liberty; (2) requiring circulators to be registered voters eligible to vote on measure which is subject of petition was valid; (3) requiring monthly reports on paid circulators was invalid restriction on core political speech; (4) requiring petitions to be circulated within six-month period was not undue restriction; and (5)

state had compelling need for names and addresses of circulators in affidavit attesting to validity of signatures.

So ordered.

1. CONSTITUTIONAL LAW k90.1(1)
92 ----
92V Personal, Civil and Political Rights
92k90 Freedom of Speech and of the Press
92k90.1 Particular Expressions and Limitations
92k90.1(1) In general.
D.Colo. 1994.

Governmental infringements on political speech undergo strict scrutiny to determine if they are substantially related to compelling governmental interest and are so narrowly drawn as to be least restrictive means of furthering that interest. U.S.C.A. Const.Amend. 1.

2. ELECTIONS k24
144 ----
144I Right of Suffrage and Regulation Thereof in General
144k23 Power to Regulate Conduct of Election
144k24 In general.
D.Colo. 1994.

State's interest in fair, honest, and orderly elections justifies some burdens on political liberty.

3. CONSTITUTIONAL LAW k9(.5)
92 ----
92I Establishment and Amendment of Constitutions
92k4 Amendment and Revision of State Constitutions
92k9 Submission to Popular Vote
92k9(.5) In general.

[See headnote text below]

3. CONSTITUTIONAL LAW k90.1(1)
92 ----
92V Personal, Civil and Political Rights
92k90 Freedom of Speech and of the Press
92k90.1 Particular Expressions and Limitations
92k90.1(1) In general.

[See headnote text below]

3. STATUTES k302
361 ----
361IX Initiative
361k302 Constitutional and statutory provisions.
D.Colo. 1994.

Compelling circulators of petitions to propose laws and constitutional amendments in Colorado to wear identification badges burdened core political speech, supporting application of strict scrutiny standard, since identification badge requirement made it more difficult to find circulators for fear of recrimination, retaliation, and harassment. U.S.C.A. Const.Amend. 1; West's C.R.S.A. Sec. 1-40-112(2).

4. CONSTITUTIONAL LAW k9(.5)
92 ----
92I Establishment and Amendment of Constitutions
92k4 Amendment and Revision of State Constitutions
92k9 Submission to Popular Vote
92k9(.5) In general.

[See headnote text below]

4. CONSTITUTIONAL LAW k90.1(1)
92 ----
92V Personal, Civil and Political Rights
92k90 Freedom of Speech and of the Press
92k90.1 Particular Expressions and Limitations

92k90.1(1) In general.

[See headnote text below]

4. CONSTITUTIONAL LAW k274.1(2.1)
92 ----
92XII Due Process of Law
92k274.1 Freedom of Speech, Press, Assembly, and Petition, Deprivation of in General
92k274.1(2) Particular Applications
92k274.1(2.1) In general.

[See headnote text below]

4. STATUTES k302
92 ----
92I Establishment and Amendment of Constitutions
361k302 Constitutional and statutory provisions.
D.Colo. 1994.

Requiring circulators of petitions to propose laws and constitutional amendments in Colorado to wear identification badges did not serve compelling state need, either to deter dishonest circulators or to demonstrate grassroots support, and restriction was not narrowly drawn to further those needs, making requirement unconstitutional under First and Fourteenth Amendments. U.S.C.A. Const.Amends. 1, 14; West's C.R.S.A. Sec. 1-40-112(2).

5. STATUTES k306
361 ----
361IX Initiative
361k306 Circulation.
D.Colo. 1994.

Criminal penalties for violations of laws governing initiative and referendum petitions are sufficient to deter dishonest circulators. West's C.R.S.A. Sec. 1-40-130.

6. CONSTITUTIONAL LAW k91
92 ----
92V Personal, Civil and Political Rights
92k91 Right of assembly and petition.

[See headnote text below]

6. STATUTES k301
361 ----
361IX Initiative
361k301 Initiative in general.

[See headnote text below]

6. STATUTES k341
361 ----
361X Referendum
361k341 Referendum in general.
D.Colo. 1994.

Restricting participation in petitioning process to registered electors was not subject to any level of scrutiny under First Amendment; state citizens were free to exercise their sovereign authority to limit scope of initiative and referendum power, so long as limitation did not involve discriminatory classification. U.S.C.A. Const.Amend. 1; West's C.R.S.A. Sec. 1-40-112(1).

7. CONSTITUTIONAL LAW k91
92 ----
92V Personal, Civil and Political Rights
92k91 Right of assembly and petition.

[See headnote text below]

7. STATUTES k302
361 ----
361IX Initiative

361k302 Constitutional and statutory provisions.
D.Colo. 1994.

Requirement that political committees supporting or opposing statewide issue file statement of organization with state and report contributions received and expenditures made by each committee was valid measure to prevent fraud and educate electorate on source of support for measure, though provision must be modified to eliminate requirement for disclosure of names and addresses of paid circulators. U.S.C.A. Const.Amend. 1; West's C.R.S.A. Sec. 1-40-121(1).

8. CONSTITUTIONAL LAW k90.1(1)
92 ----
92V Personal, Civil and Political Rights
92k90 Freedom of Speech and of the Press
92k90.1 Particular Expressions and Limitations
92k90.1(1) In general.

[See headnote text below]

8. STATUTES k302
361 ----
361IX Initiative
361k302 Constitutional and statutory provisions.
D.Colo. 1994.

Statute requiring petition proponents to file monthly reports on paid circulators was invalid restriction on core political speech; state failed to demonstrate how monthly reports were necessary to meet stated objectives of preventing fraud if final report is required when petition is submitted to designated election official. West's C.R.S.A. Sec. 1-40-121(2).

9. STATUTES k302
361 ----
361IX Initiative

361k302 Constitutional and statutory provisions.
D.Colo. 1994.

Statute requiring that petitions be circulated within six-month period was not unreasonable burden on rights of proponents of petition or voting public, considering importance of fixing proper title for legitimate objective of voter education and fairness. West's C.R.S.A. Sec. 1-40-108(1).

10. CONSTITUTIONAL LAW k9(.5)
92 ----
92I Establishment and Amendment of Constitutions
92k4 Amendment and Revision of State Constitutions
92k9 Submission to Popular Vote
92k9(.5) In general.

[See headnote text below]

10. STATUTES k302
361 ----
361IX Initiative
361k302 Constitutional and statutory provisions.
D.Colo. 1994.

State had compelling need ***995** for names and addresses of circulators of petitions proposing laws and constitutional amendments in affidavit by circulators to insure accuracy of petition signing process, and requirement was sufficiently narrowly drawn to be constitutional; primary purpose of affidavit requirement was to provide opportunity for adequate hearing on sufficiency of signatures for petition and for other matters relevant to placing measure on ballot. West's C.R.S.A. Sec. 1-40-111(2).

11. CONSTITUTIONAL LAW k9(.5)
92 ----
92I Establishment and Amendment of Constitutions

92k4 Amendment and Revision of State Constitutions
92k9 Submission to Popular Vote
92k9(.5) In general.

[See headnote text below]

11. STATUTES k302
361 ----
361IX Initiative
361k302 Constitutional and statutory provisions.
D.Colo. 1994.

Circulator affidavit requirement for petitions to propose laws and constitutional amendments was not unconstitutionally vague; statute simply required circulator to attest that section he or she circulated, not other circulators' sections, complied with initiative statute. West's C.R.S.A. Sec. 1-40-116(1).

*997 Neil D. O'Toole, Dallas, Holland & O'Toole, P.C., Denver, CO, for plaintiffs.

Bill Orr, pro se.

Maurice Knaizer, State of Colo., Asst. Atty. Gen., Denver, CO, for defendant.

MEMORANDUM OPINION AND ORDER

MATSCH, Chief Judge.

This is an action for declaratory and injunctive relief under 42 U.S.C. Sec. 1983 from restrictions regarding the circulation and submission of petitions to propose laws and constitutional amendments in the State of Colorado. The principal contention is that the challenged requirements

restrict freedoms protected by the First and Fourteenth Amendments to the United States Constitution.

The plaintiff, American Constitutional Law Foundation, Inc., is a non-profit, public-interest organization supportive of this form of direct democracy. The individual plaintiffs, excepting William David Orr, have participated in the petitioning process. Jack Hawkins worked in support of petitions described as the Colorado's Safe Workplace Initiative and Worker's Choice of Care. Jon Baraga has been the state coordinator for the Colorado Hemp Initiative. William David Orr, a minor, wants to circulate petitions. All of the plaintiffs have shown sufficient commitment to continuing efforts to address the Colorado electorate through petitions for the Initiative and referendum to establish standing to bring this action and to make the issues justiciable within the jurisdiction provided by 28 U.S.C. Sec. 1343. The legal questions have been presented within the context of an evidentiary record submitted in support of cross motions for summary judgment and at a trial to the court. There are no material factual disputes.

COLORADO LAW

The focus of the plaintiffs' pleadings is an act of the General Assembly of the State of Colorado identified as Senate Bill 93-135, amending and relocating provisions concerning the initiative and referendum in Article 40 of Title 1 of the Colorado Revised Statutes. In the pre-trial order, the plaintiffs summarized their claims that this legislation violates protections found in the First, Ninth and Fourteenth Amendments to the United States Constitution in the following ways:

A) Non-registered voter prohibition on petition circulation.

B) Prohibiting circulators under the age of 18 to circulate.

C) Restricting circulating petitions to an arbitrarily set time period of six months.

D) Prohibiting circulation of petitions without badge identification.

E) Mandating certain requirements for paid circulators.

F) The affidavit circulator provisions are vague so as to make competent compliance impossible.

G) The disclosure provisions on paid circulators are unconstitutionally burdensome.

Pre-trial Order of June 1, 1994.

Some of the provisions in S.B. 93-135 simply recodify the existing law in Colorado and some repeat requirements in the Colorado Constitution. A brief historical review of the development of direct democracy in Colorado is necessary to achieve an appropriate perspective on the plaintiffs' contentions.

In 1910, voters in Colorado approved an amendment to Section 1 of Article V of the ***998** Constitution of the State of Colorado, establishing the initiative and referendum. 1910 Colo.Sess.Laws 11. The initial paragraph of that amendment provides the premise for this reservation of legislative power in these words:

> Section 1. The legislative power of the State shall be vested in the General Assembly consisting of a Senate and House of Representatives, both to be elected by the people, but the people reserve to themselves the power

> to propose laws and amendments to the Constitution and to enact and reject the same at the polls independent of the General Assembly, and also reserve power at their own option to approve or reject at the polls any act, item, section or part of any act of the General Assembly.

An exception to the power of the referendum was made for "laws necessary for the immediate preservation of the public peace, health or safety." As will be discussed, the Colorado General Assembly has routinely used this exception to avoid review of legislation by referendum by adopting a "safety clause" in each enactment. This organic act required that petitions be signed by qualified electors who must provide their residence addresses and the dates of signing. It also required the attachment of an affidavit of some qualified elector verifying the signatures.

While this section of the constitution was self-executing, the Colorado General Assembly has, from time to time, legislated additional requirements. Thus, in 1913, the General Assembly enacted H.B. No. 1 directing that each initiative and referendum petition bear a warning that it is a felony for anyone to sign with any name other than his or her own, or to knowingly sign more than one petition, or to sign when not a qualified elector. 1913 Colo.Sess.Laws 310. That act required that the signers must include the street and number of their residences; it repeated the provision for an attesting affidavit by a qualified elector; it established a format for petitions and it directed that each petition designate not less than three nor more than five representatives of the signers. Provision was made for a protest and a hearing on the sufficiency of the petition. The legislation also imposed requirements for the ballot title and publication of arguments for and against the measure.

In 1919, the Colorado General Assembly enacted S.B. No. 141 establishing a procedure to fix a ballot title for an initiated measure and limiting the time for circulation to six months from the date that the title and submission clauses have been provided. 1919 Colo.Sess.Laws 436.

In 1941, the General Assembly enacted H.B. No. 947. It prohibited the payment of "any money or other thing of value in consideration of or as an inducement to the circulation of any initiative or referendum petition" and established a criminal penalty for such conduct. 1941 Colo.Sess.Laws 480. That provision came before the Colorado Supreme Court in Urevich v. Woodard, 667 P.2d 760 (Colo.1983), in the context of circulation of an initiative petition by ACORN, a non-profit organization whose circulators were to solicit financial contributions to the organization in exchange for payment to them of a percentage of the contributions they collected. The court narrowly construed the prohibiting language to avoid a conflict with Article V Section 1 of the Colorado Constitution and held that ACORN's method of petition circulation and solicitation of contributions did not violate the statute. In the opinion for the unanimous court, Justice Rovira noted the provision in Article II, Section 2 of the Colorado Constitution that the people of the State of Colorado "have the sole and exclusive right of governing themselves" and observed that the reservation of the power to initiate legislation in Article V, Section 1 is a right "of the first order." After also noting that the Colorado Supreme Court had previously recognized the authority of the legislature to enact legislation regarding the exercising of this reserved power, he wrote:

> The balance between the legislative power of the general assembly and the legislative power of the people has been struck in favor of the people in the fundamental charter of our state. No statute passed by

> the general assembly can be permitted to alter this allocation of power.
>
> Id. at 762-3.

***999** Legislation changing those persons authorized to circulate petitions from qualified electors to registered voters was enacted in 1971. That statute was ruled unconstitutional in Colorado Project-Common Cause v. Anderson, 178 Colo. 1, 495 P.2d 220 (1972) because it was inconsistent with Article V, Section 1. Chief Justice Pringle wrote the opinion for the unanimous court, saying:

> It is axiomatic that there are more citizens of this state who have the qualifications to register than there are those who actually register. The statutory requirement that the signing and circulating of petitions must be by registered electors rather than permitting qualified electors to carry on these functions is therefore a limitation not authorized by the constitution and is impermissible. Id. 495 P.2d at 222.

The statutory prohibition of payment to circulators enacted in 1941 was challenged under Federal law in 1984. That statute was held to be a violation of the First and Fourteenth Amendments to the United States Constitution by the Tenth Circuit Court of Appeals in Grant v. Meyer, 828 F.2d 1446 (10th Cir.1987), affirmed by a unanimous opinion of the Supreme Court in Meyer v. Grant, 486 U.S. 414, 108 S.Ct. 1886, 100 L.Ed.2d 425 (1988). See discussion infra, p. 7.

The requirement that only registered electors could sign and circulate petitions was again imposed in 1980 through an amendment to Article V, Section 1 of the Colorado Constitution, pursuant to a referendum approved by Colorado voters. To be a registered elector in Colorado, a

person must be at least 18 years old, a citizen of the United States and a resident of Colorado for at least 25 days before an election. C.R.S. Sec. 1-2-101 (Supp.1994).

A significant change made by S.B. 93-135, is an amendment to C.R.S. 1-40-112(2) (Supp.1994) adding a requirement that petition circulators wear identification badges as follows:

> (a) All circulators who are not to be paid for circulating petitions concerning ballot issues shall display an identification badge that includes the words "VOLUNTEER CIRCULATOR" in bold-faced type which is clearly legible and the circulator's name.
>
> (b) All circulators who are to be paid for circulating petitions concerning ballot issues shall display an identification badge that includes the words "PAID CIRCULATOR" in bold-faced type which is clearly legible, the circulator's name, and the name and telephone number of the individual employing the circulator.

S.B. 93-135 also imposed reporting requirements on the proponents of a petition when paid circulators are used. C.R.S. Sec. 1-40-121 (Supp.1994) provides, in relevant part,

> (1) The proponents of the petition shall file with the official who receives filings under the "Campaign Reform Act of 1974" for the election the name, address, and county of voter registration of all circulators who were paid to circulate any section of the petition, the amount paid per signature, and the total amount paid to each circulator. The filing shall be made at the same time the petition is filed with the designated election official....

> (2) The proponents of the petition shall sign and file monthly reports with the designated election official, due ten days after the last day of each month in which petitions are circulated on behalf of the proponents by paid circulators. Monthly reports shall set forth the following:
>
> (a) the names of the proponents;
>
> (b) the name and the residential and business addresses of each of the paid circulators;
>
> (c) the name of the proposed ballot measure for which petitions are being circulated by paid circulators; and
>
> (d) the amount of money paid and owed to each paid circulator for petition circulation during the month in question.

To obtain access to the ballot at general elections under the statutory and constitutional law in effect in Colorado at the time of trial, proponents of an initiated measure must submit a draft of the proposal to the State Legislative Council and the Legislative Legal Services Office for review and comment. C.R.S. Sec. 1-40-105(1) (Supp.1994). The draft then goes to the title board, which ***1000** prepares a title, submission clause, and summary. C.R.S. Sec. 1-40-106 (Supp.1994). The title board's first meeting can be no earlier than the first Wednesday in December. C.R.S. Sec. 1-40-106(1). No petition for an initiative measure can be circulated before the title, submission clause and summary have been fixed. C.R.S. Sec. 1-40-108(1) (Supp.1994). This process can be delayed by a motion for rehearing before the title board filed by any registered elector and the dispute can be taken to the Colorado Supreme Court. C.R.S. Sec. 1-40-107(2) (Supp.1994). Petitions must be filed with the Secretary of State within six months after the

number of petition signatures must be equal in number to at least five percent of the total number of persons voting for all candidates for the Office of Secretary of State in the previous general election. Colo. Const. Art. V, Sec. 1 (Supp.1994). The petitions must be filed with the Secretary of State at least three months prior to the election at which they are to be voted upon. Id.

THE UNITED STATES CONSTITUTION

In Meyer v. Grant, 486 U.S. 414, 108 S.Ct. 1886, 100 L.Ed.2d 425 (1988), the Supreme Court concluded that the circulation of an initiative petition involved interactive communication characterized as "core political speech" within the protection of the First Amendment, applicable to the states under the Fourteenth Amendment. The court identified the invalid aspects of the statutory prohibition of payment of circulators in these words:

> The refusal to permit appellees to pay petition circulators restricts political expression in two ways: First, it limits the number of voices who will convey appellees' message and the hours they can speak, and, therefore, limits the size of the audience they can reach. Second, it makes it less likely that appellees will garner the number of signatures necessary to place the matter on the ballot, thus limiting their ability to make the matter the focus of statewide discussion. Id. at 422-423, 108 S.Ct. at 1892.

The burden of the state to justify such a restriction was described in the following paragraph:

> We agree with the Court of Appeals' conclusion that the statute trenches upon an area in which the importance of First Amendment protections is "at its zenith." For

BEST AVAILABLE COPY

> that reason, the burden that Colorado must overcome to justify this criminal law is well-nigh insurmountable. Id. at 425, 108 S.Ct. at 1894.

[1] It is familiar learning that governmental infringements on political speech undergo strict scrutiny to determine if they are substantially related to a compelling governmental interest and are so narrowly drawn as to be the least restrictive means of furthering that interest. Buckley v. Valeo, 424 U.S. 1, 64, 96 S.Ct. 612, 656, 46 L.Ed.2d 659 (1976); NAACP v. Alabama, 357 U.S. 449, 463, 78 S.Ct. 1163, 1172, 2 L.Ed.2d 1488 (1958).

[2] The Supreme Court has not applied the strict scrutiny standard to all legislation affecting the right to vote and the freedom of association with others for political purposes. The state's interest in fair, honest and orderly elections has been recognized as a justification for some burdens on political liberty. In Storer v. Brown, 415 U.S. 724, 94 S.Ct. 1274, 39 L.Ed.2d 714 (1974), Justice White wrote of the difficulty in establishing a rule of general application. In Anderson v. Celebrezze, 460 U.S. 780, 103 S.Ct. 1564, 75 L.Ed.2d 547 (1983), an Ohio statute imposing an early filing deadline on independent candidates for President was invalidated by a divided court as an undue burden when balanced against the state's interests in voter education, political stability and equal treatment with partisan candidates. In Norman v. Reed, 502 U.S. 279, 112 S.Ct. 698, 116 L.Ed.2d 711 (1992), the Court again divided over limitations on ballot access by a newly formed political party.

Justice White addressed the problem of articulating a test for constitutionality again in Burdick v. Takushi, --- U.S. ----, 112 S.Ct. 2059, 119 L.Ed.2d 245 (1992), writing for the majority in affirming a prohibition of ***1001** write-in candidates in Hawaii. There, he wrote:

Election laws will invariably impose some burden upon individual voters. Each provision of a code, "whether it governs the registration and qualifications of voters, the selection and eligibility of candidates, or the voting process itself, inevitably affects--at least to some degree--the individual's right to vote and his right to associate with others for political ends." Anderson v. Celebrezze, 460 U.S. 780, 788, 103 S.Ct. 1564, 1570, 75 L.Ed.2d 547 (1983). Consequently, to subject every voting regulation to strict scrutiny and to require that the regulation be narrowly tailored to advance a compelling state interest, as petitioner suggests, would tie the hands of States seeking to assure that elections are operated equitably and efficiently. See Brief for Petitioner 32-37. Accordingly, the mere fact that a State's system "creates barriers ... tending to limit the field of candidates from which voters might choose ... does not of itself compel close scrutiny." Bullock v. Carter, 405 U.S. 134, 143, 92 S.Ct. 849, 856, 31 L.Ed.2d 92 (1972); Anderson, supra, 460 U.S. at 788, 103 S.Ct. at 1569-1570; McDonald v. Board of Election Comm'nrs of Chicago, 394 U.S. 802, 89 S.Ct. 1404, 22 L.Ed.2d 739 (1969).

Instead, as the full Court agreed in Anderson, supra, 460 U.S. at 788-789, 103 S.Ct. at 1560-1570; id., at 808, 817, 103 S.Ct. at 1580, 1584-1585 (Rehnquist, J., dissenting), a more flexible standard applies. A court considering a challenge to a state election law must weigh "the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments that the plaintiff seeks to vindicate" against "the precise interests put forward by the State as justifications for the burden imposed by its rule," taking into consideration "the extent to which those interests make it necessary to burden the plaintiff's rights." Id., at 789, 103 S.Ct. at 1570;

Tashjian [v. Republican Party of Connecticut], supra, 479 U.S. [208] at 213-214, 107 S.Ct. [544] at 547-548 [93 L.Ed.2d 514].

Under this standard, the rigorousness of our inquiry into the propriety of a state election law depends upon the extent to which a challenged regulation burdens First and Fourteenth Amendment rights. Thus, as we have recognized when those rights are subjected to "severe" restrictions, the regulation must be "narrowly drawn to advance a state interest of compelling importance." Norman v. Reed, 502 U.S. 279, ----, 112 S.Ct. 698, 705, 116 L.Ed.2d 711 (1992). But when a state election law provision imposes only "reasonable, nondiscriminatory restrictions" upon the First and Fourteenth Amendment rights of voters, "the State's important regulatory interests are generally sufficient to justify" the restrictions. Anderson, supra, 460 U.S. at 788, 103 S.Ct. at 1570; see also id., at 788-789, n. 9, 103 S.Ct. at 1570, n. 9. We apply this standard in considering petitioner's challenge to Hawaii's ban on write-in ballots.

The Tenth Circuit Court of Appeals recently concluded that the state's interest in voter education supported a Kansas statute imposing a deadline for independent candidates to file nominating petitions which was characterized as a slight burden upon the rights of voters. Hagelin for President Committee v. Graves, 25 F.3d 956 (10th Cir.1994).

Under the guidance of these cases, the analysis of the claims in this case must proceed by defining the character of the rights affected, the extent of the injury to those rights and then the nature and magnitude of the competing interests of the state.

THE PLAINTIFFS' CLAIMS

[3] The plaintiffs have adequately demonstrated that compelling circulators to wear identification badges inhibits participation in the petitioning process. Jon Baraga recounted harassment that he personally experienced while circulating a hemp initiative petition and testified that the identification badge requirement made it more difficult to find circulators because of a fear of recrimination, retaliation and harassment. The plaintiff Hawkins testified that he found that potential circulators were not willing to wear ***1002** personal identification badges required by this statute. The plaintiffs have shown that this requirement burdens core political speech. The strict scrutiny standard applies.

[4][5] The defendant contends that the requirement is justified because it serves two compelling state interests: (1) The badges allow the public to identify the petition circulator in the event a complaint is filed; and, (2) the badges demonstrate to the public whether or not there is grassroots support for an initiative.

The defendant has presented some anecdotal evidence of circulators misrepresenting the effects of law changes proposed by their petitions and the inability of the observers to report these incidents because they could not identify those circulators. Assuming that such misstatements could be considered sufficient for prosecution, the state's interest in pursuing these matters is insufficient under the strict scrutiny standard. Misstating the expected consequences of changes in the law is not uncommon in the political process. Inaccuracies in political discourse do not necessarily rise to the level of calculated falsehood or criminal fraud. See Garrison v. Louisiana, 379 U.S. 64, 74, 85 S.Ct. 209, 215-16, 13 L.Ed.2d 125 (1964). The defendant's concern that some circulators may use deliberate falsehoods to obtain signatures does not justify this burden on all circulators. The current criminal penalties for violations of the laws governing initiative and referendum petitions are sufficient

to deter dishonest circulators. C.R.S. Sec. 1-40-130 (Supp.1994). Therefore, the state's interest in honesty in public discussion of governmental issues is not so compelling as to warrant the identification of those who choose to speak in support of change. Moreover, a prohibition of anonymous distribution of campaign literature was ruled invalid in Wilson v. Stocker, 819 F.2d 943 (10th Cir.1987). There, the Court relied on Talley v. California, 362 U.S. 60, 80 S.Ct. 536, 4 L.Ed.2d 559 (1960), voiding an ordinance banning all anonymous handbills. The Court recognized the historical importance of anonymity in political speech under certain circumstances. The types of controversy generated by such initiatives as the Hemp Initiative present such circumstances.

The relationship of the badges to the demonstration of grassroots support is not made on the record. Here, as in Grant v. Meyer, the State's interest in a demonstration of sufficient support is met by the requirement of a percentage of the votes cast in the previous election for Secretary of State. Grant v. Meyer, supra, 828 F.2d at 1455. The badge identification requirement substantially affects the number of potential circulators which translates into a corresponding decrease in the amount of protected political speech. The state's articulated interests are not compelling and the restriction has not been narrowly drawn to further those interests. Accordingly, the badge requirement is a violation of the First and Fourteenth Amendments and is therefore unconstitutional.

[6] S.B. 93-135 requires that circulators be registered electors who are eligible to vote on the measure which is the subject of the petition. It also requires the circulators to be at least 18 years of age at the time of the circulation. C.R.S. Sec. 1-40-112(1) (Supp.1994). Nothing in the record suggests any statewide ballot issues as to which the qualifying phrase "who are eligible to vote on the measure"

would be a restriction beyond the requirement of registration. The record does show that the requirement of registration limits the number of persons available to circulate and sign these petitions and, accordingly, restricts core political speech. However, the source of this requirement is not S.B. 93-135; it is the constitutional amendment adopted by the people in 1980. There is nothing in the United States Constitution that requires that any state provide for the initiative or referendum. The people are the source of the power and they may exercise their sovereign authority to limit the scope of that power so long as there is no discriminatory classification. The Colorado electorate chose to restrict participation in the petitioning process to registered electors. This decision is not subject to any level of scrutiny by this court in the context of this case.

***1003** The claim of the minor plaintiff, William David Orr, that because he is under 18 years of age he is eliminated from participation in political speech as a circulator is answered by this restriction to registered electors. As previously noted, qualified voters in Colorado must be at least 18 years old, and the requirement of being a qualified elector goes back to the original provision for the initiative made in the constitutional amendment adopted in 1910. There is, therefore, no need to justify the age requirement as a separate limitation.

[7] The report required by the provision in S.B. 93-135, codified at C.R.S. Sec. 1-40-121(1) (Supp.1994), is an extension of the requirements contained in the Colorado Campaign Reform Act of 1974, C.R.S. Sec. 1-45-101, et seq. The Campaign Reform Act requires political committees supporting or opposing a statewide issue to file a statement of organization with the state and requires the filing by the campaign treasurer of reports of all contributions received and expenditures made by or on behalf of such a political committee. C.R.S. Secs. 1-45-106

& 108 (Supp.1994). These reports must be submitted 11 days before and 30 days after the election. Id. S.B. 93-135 added a requirement that proponents of a petition, at the time of filing, must disclose the names, addresses and county of voter registration of all circulators paid to circulate any section of the petition together with the amount paid for each signature and the total amount paid to each circulator. C.R.S. Sec. 1-40-121(1) (Supp.1994). This requirement prevents anonymity of the circulators and thus exposes them to intimidation, harassment and retribution in the same manner as the badge requirement.

The legislative history shown in the record and the evidence presented at the trial show that since Meyer v. Grant the circulation of initiative petitions has become a business and the proponents of several petitions, particularly those seeking authorized gambling, have hired contractors to do the circulation.

Given the business of circulation for hire, there is an interest in compelling disclosure by the proponents of the persons or entities being hired, not only to prevent fraud but to give the public information concerning who the principal proponents are and what kind of financial resources may be available to them. What may appear to be grassroots support might in actuality be well financed special interests with hidden agenda. That legitimate interest, however, is not significantly advanced by disclosure of the names and addresses of each person paid to circulate any section of the petition. What is of interest is the payor, not the payees.

The final report is a ballot access requirement. It serves the same purposes as the Campaign Reform Act--the prevention of fraud and the education of the electorate as to the source of support for the measure submitted through this process. Upon elimination of the provision requiring

identification of the circulators, the burden on the proponents is slight. This requirement, as modified, is valid.

[8] The statute also requires petition proponents to file monthly reports on paid circulators. C.R.S. Sec. 1-40-121(2) (Supp.1994). As noted above, to the extent the monthly report requirement includes the name and residential and business addresses of each of the paid circulators, it is constitutionally invalid. The other requirements of the monthly reports are the names of the proponents, the name of the proposed ballot measure for which petitions are being circulated by paid circulators and the amount of money paid and owed to each paid circulator for petition circulation during the month in question. Preparation of the monthly reports is burdensome and involves an additional expense to those supporting an initiative or referendum petition. The testimony presented shows that the monthly reports affect the circulation process and therefore the amount of core political speech. The state has failed to demonstrate how the monthly reports meet the stated objectives of preventing fraud as compared with the final report to be filed when the petitions are submitted to the designated election official. The monthly reports are restrictions on core political speech and are invalid.

[9] The plaintiffs assert and have presented evidence to support their contention that the requirement that the petitions be ***1004** circulated within a six month period, C.R.S. Sec. 1-40-108(1) (Supp.1994), is an undue restriction on core political speech. While it does, indeed, affect the quantity of such speech, the primary purpose is the preparation of an orderly ballot. The defendant has presented evidence of successful circulations and there have been many initiated measures on the election ballots in Colorado as demonstrated in defendants' Exhibits H and I. Testimony of witnesses who successfully placed measures on the ballot shows that with planning and a proper preparation

of the ballot title, there are at least four months for active solicitation of signatures and that has been adequate. Viewing this issue as a ballot access measure and considering the importance of fixing a proper title for the legitimate objective of voter education and fairness, the court finds and concludes that the six month limitation is not an unreasonable burden on the rights of either the proponents of the petition or of the voting public.

[10] The plaintiffs have made a general challenge to the requirement of an affidavit by the circulators enacted in S.B. 93-135 and now appearing in the code as 1-40-111(2) (Supp.1994) which provides as follows:

> (2) To each petition section shall be attached a signed, notarized, and dated affidavit executed by the registered elector who circulated the petition section, which shall include his or her printed name, the address at which he or she resides, including the street name and number, the city or town, the county, and the date he or she signed the affidavit; that he or she has read and understands the laws governing the circulation of petitions; that he or she was a registered elector at the time the section of the petition was circulated and signed by the listed electors; that he or she circulated the section of the petition; that each signature thereon was affixed in the circulator's presence; that each signature thereon is the signature of the person whose name it purports to be; that to the best of the circulator's knowledge and belief each of the persons signing the petition section was, at the time of signing, a registered elector; and that he or she has not paid or will not in the future pay and that he or she believes that no other person has so paid or will pay, directly or indirectly, any money or other thing of value to any signer for the purpose of inducing or causing such signer to affix his or her signature to the petition.

This is a recognition of the central function of the circulator in preventing fraud and insuring accuracy in the petition signing process. The requirement that the attesting circulator include his or her name and residential address raises the same concerns as the monthly reports by the proponents and to some extent the identification badge requirement. The difference is that the affidavit requirement has the primary purpose of providing the opportunity for an adequate hearing on the sufficiency of the signatures for the petition and for other matters relevant to placing the measure on the ballot. Here, then, the identification must be considered in terms of the state's power to regulate ballot access. There is a compelling necessity to be able to summon circulators to provide testimony at a hearing on challenges to the validity of the signatures and for other matters relevant to the petitioning process.

There is a qualitative difference between requiring name and residence identification on an affidavit for the sections of the petition circulated by the identified individual and the inclusion of his or her name and address in monthly reports or on badges displayed on the street. That difference is a matter of access. Those who may seek this identifying information for such purposes as retaliation or harassment will have considerably greater difficulty in finding these names and addresses in the masses of papers filed with the petitions as compared with the monthly reports and the identification badges. Even assuming a strict scrutiny standard, the court finds that the state's compelling need for the names and addresses of the circulators is justified and this requirement is sufficiently narrowly drawn to be constitutional.

[11] The plaintiffs also argue that the circulator affidavit requirement, as it is reiterated in C.R.S. Sec. 1-40-116(1) (Supp.1994), is unconstitutionally vague because it requires circulators to aver, without personal knowledge, that all

circulators have complied ***1005.** with C.R.S. Sec. 1-40-101 et seq. While not artfully drafted, this section is not unconstitutionally vague. The general reference to circulator affidavits in Sec. 1-40-116 is controlled by the specific affidavit requirements in C.R.S. Sec. 1-40-111(2), supra. See C.R.S. Sec. 2-4-205 (1980 Repl.Vol. 1B). Section 1-40-111(2) simply requires that the circulator attest that he or she has circulated a section of the petition in compliance with the initiative statute. The statute does not require each circulator to attest to the validity of the other circulators' sections of the petition.

The plaintiffs have contended that the Ninth Amendment to the United States Constitution has been violated by these limitations on the reserved power of the initiative and referendum. That amendment provides:

> The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

That broad language has seldom been used by the courts as a basis for invalidating legislation. It is not applicable here because the rights enumerated by the First and Fourteenth Amendments are adequate to the determination of the issues presented in this case.

As previously noted, the Colorado General Assembly has routinely used a "safety clause," providing that its legislative enactments are necessary for the immediate preservation of peace, health and safety to avoid a petition for a referendum and the inclusion of such a clause in S.B. 93-135 prevented a referendum on it. This court previously denied the plaintiffs' motion for a preliminary injunction based on a claim of invalidity of that legislative statement. In part, that decision rested on the conclusion that the plaintiffs were free under the initiative power to propose any

measure by petition. They could have initiated a repeal of S.B. 93-135. There is a more fundamental reason to reject the request that this court invalidate a safety clause in any legislative enactment. It is the doctrine of separation of powers. No matter how routinely the General Assembly may attach such clauses in legislative measures, before any court can invalidate that provision in any particular bill, that court must make a determination that the particular legislation could not possibly have any relevance to the immediate preservation of the public peace, health or safety. That is a political question which no court is empowered to answer. The safety clause in S.B. 93-135 was a valid provision in that legislation.

Upon the foregoing, it is

ORDERED that judgment will enter declaring that the following provisions of the Colorado Revised Statutes are invalid because they are in violation of the First and Fourteenth Amendments to the United States Constitution, and ordering that the defendant Secretary of State of the State of Colorado is permanently enjoined from enforcing those provisions: C.R.S. Sec. 1-40-121(1) (Supp.1994) to the extent that it requires the proponents of a petition for the initiative or referendum to provide "the name, address, and county of voter registration of all circulators who were paid to circulate any section of the petition" and the names of circulators in reporting the amounts paid to circulators; C.R.S. Sec. 1-40-121(2) (Supp.1994) in its entirety, and C.R.S. Sec. 1-40-112(2) (Supp.1994) in its entirety. All other claims of the plaintiffs shall be dismissed. The plaintiffs shall have to and including December 5, 1994, within which to file any claim for attorney's fees under 42 U.S.C. Sec. 1988.

APPENDIX C

UNITED STATES COURT OF APPEALS

TENTH CIRCUIT

AMERICAN CONSTITUTIONAL LAW FOUNDATION, INC.; DAVID AITKEN; JON BARAGA; CRAIG C. ELEY; JACK HAWKINS; LONNIE HAYNES; ALDEN KAUTZ; BILL ORR, individually and as the Parent and Guardian of WILLIAM DAVID ORR,

Plaintiffs-Appellants/
Cross - Appellees,

v.

NATALIE MEYER, individually and as Secretary of State for the State of Colorado; DOUGLAS BROWN, individually and as Director of Legislative Legal Services for the State of Colorado,

Defendants-Appellees/
Cross - Appellants.

Nos. 94-1576
94-1581

ORDER
Entered September 8, 1997

Before **BRISCOE** and **LUCERO**, Circuit Judges.

This matter comes on for consideration of appellant's petition for rehearing and suggestion for rehearing en banc.

Upon consideration whereof, the petition for rehearing is denied by the panel that rendered the decision.

In accordance with Rule 35(b), Federal Rules of Appellate Procedure, the suggestion for rehearing en banc was transmitted to all of the judges of the court who are in regular active service. No member of the panel and no judge in regular active service on the court having requested that the court be polled on rehearing in banc, Rule 35, Federal Rules of Appellate Procedures, the suggestion for rehearing en banc is denied.

Entered for the Court

PATRICK FISHER, Clerk

By: /s/
Deputy Clerk

APPENDIX D

CONSTITUTIONS AND STATUTES

U. S. Const., Amend. 1 Congress shall make no law...abridging freedom of speech...

Colo. Const. art. V, § 1

> (6) The petition shall consist of sheets having such general form printed or written at the top thereof as shall be designated or prescribed by the secretary of state; such petition shall be signed by registered electors in their own proper persons only, to which shall be attached the residence address of such person and the date of signing the same. To each of such petitions, which may consist of one or more sheets, shall be attached an affidavit of some registered elector that each signature thereon is the signature of the person whose name it purports to be and that, to the best of the knowledge and belief of the affiant, each of the persons signing said petition was, at the time of signing, a registered elector. Such petition so verified shall be prima facie evidence that the signatures thereon are genuine and true and that the persons signing the same are registered electors.

Section 1-40-112, C.R.S. (1997)

> Circulators-requirements. (1) No section of a petition for any initiative or referendum measure shall be circulated by

any person who is not a registered elector and at least eighteen years of age at the time the section is circulated.

(2) (a) All circulators who are not to be paid for circulating petitions concerning ballot issues shall display an identification badge that includes the words "VOLUNTEER CIRCULATOR" in bold-faced type which is clearly legible and the circulator's name.

(b) All circulators who are to be paid for circulating petitions concerning ballot issues shall display an identification badge that includes the words "PAID CIRCULATOR" in bold-faced type which is clearly legible, the circulator's name, and the name and telephone number of the individual employing the circulator.

Section 1-40-121, C.R.S. (1997)

Receiving money to circulate petitions - filing. (1) The proponents of the petition shall file with the official who receives filings under the "Campaign Reform Act of 1974", article 45 of this title, for the election the name, address, and county of voter registration of all circulators who were paid to circulate any section of the petition, the amount paid per signature, and the total amount paid to each circulator. The filing shall be made at the same time the petition is filed with the secretary of state. Any payment

made to circulators is an expenditure under article 45 of this title.

(2) The proponents of the petition shall sign and file monthly reports with the secretary of state due ten days after the las day of each month in which petitions are circulated on behalf of the proponents by paid circulators. Monthly reports shall set for the following:

(a) The names of the proponents;

(b) The name and the residential and business addresses of each of the paid circulators;

(c) The name of the proposed ballot measure for which petitions are being circulated by paid circulators; and

(d) The amount of money paid and owed to each paid circulator for petition circulation during the month in question.

APPENDIX E

LEGISLATIVE COUNCIL
OF THE
COLORADO GENERAL ASSEMBLY

AN ANALYSIS OF
1980 BALLOT PROPOSALS

Research Publication No. 248
1980

[LETTERHEAD OF LEGISLATIVE COUNCIL]

LETTER OF TRANSMITTAL

August 7, 1980

This analysis of measures to be decided at the 1980 general election has been prepared by the Colorado Legislative Council as a public service to members of the General Assembly and to the general public purusant [sic] to section 2-3-303, Colorado Revised Statutes 1973.

Four proposed constitutional amendments and two statutory measures are analyzed in this publication. The first four measures are proposed amendments to the constitution. Amendments 1 and 2 were referred by the General Assembly and amendments 3 and 4 are initiated measures. If approved by the voters, these four constitutional amendments could only be revised by a vote of the electors at a subsequent general election.

The statutory proposals, amendments 5 and 6, are both initiated measures. If approved by the voters, these items may be changed by the General Assembly. Initiated measures may be placed on the ballot by petition of the qualified electors. Initiated measures require the signature of not less than eight percent of the qualified electors.

The provisions of each proposal are set forth, with general comments on their application and effect. Careful attention has been given to arguments both for and against the various proposals in an effort to present both sides of each issue. While all arguments for and against the proposals may not have been included, major arguments have been set forth, so that each citizen may decide for himself the relative merits of each proposal.

It should be emphasized that the Legislative Council takes no position, pro or con, with respect to the merits of these proposals. In listing the ARGUMENTS FOR and the ARGUMENTS AGAINST, the council is merely putting forth the arguments commonly offered by proponents of each proposal. The quantity or quality of the FOR and AGAINST paragraphs listed for each proposal is not to be interpreted as an indication or inference of council sentiment.

Respectfully submitted,

/s/ Senator Fred Anderson
Chairman
Colorado Legislative Council

[p. 1]

Ballot Title: An Amendment to article V and XIX of the constitution of the state of Colorado, concerning the initiative and referendum process, and providing that an elector must be registered in order to sign a petition for an initiated or referred measure and that the proposed initiated measures shall be submitted to the legislative research and drafting offices of the general assembly for review and comment at a meeting open to the public before a ballot title is fixed.

Provision of the Proposed Constitutional Amendment

The proposed amendment to the Colorado Constitution would:

— Require that any person signing a statewide or municipal initiative or referendum petition must be a "registered elector," that is, the signer must be registered to vote at the next general election. [Existing law requires that any person signing such a petition must be a "qualified elector" or a "legal voter," which are equivalent terms and refer to a person who is eligible to register to vote but need not be registered.]

— Change the number of signatures needed to propose an amendment to the state constitution or statutes by initiative from eight percent to five percent of the total votes cast for the Secretary of State a the previous election.

— Require that the legislative research and drafting offices to comment on the original drafts of all initiative measures at a meeting open to the public, but prohibit the General Assembly from establishing deadlines for the submission of an original draft of an initiative or requiring

changes in any initiative proposed for submission to the voters.

— Add additional language providing that the form of petitions would be prescribed pursuant to law.

— Clarify that the General Assembly is prohibited from proposing amendments to more than six articles of the Colorado Constitution at any one general election.

— Eliminate conflicting language contained in Article XIX, Section 2, Colorado Constitution, requiring that proposed amendments to the Colorado Constitution submitted by the General Assembly be published in full in not more than one newspaper of general circulation in each county for four successive weeks prior to the election. [Another article of the constitution contains language requiring the publication of proposed constitutional amendments in two issues of two newspapers of opposite political faiths.]

[p. 2] The first power reserved to the people under Article V, Section 1, Colorado Constitution, is the initiative. Under the initiative provision, the qualified electors of Colorado may petition to place a proposed state law or state constitutional amendment before the voters at a general election.

The second power reserved to the people is the referendum, which involves two separate procedures: 1) the General Assembly may refer proposed changes in the statutes to a vote at a general election; and 2) the referendum also establishes a procedure whereby measures, or sections thereof, adopted by the General Assembly which are not necessary to immediate preservation of the public peach, health, and safety may be submitted to a vote at the polls upon petition. For all practical purposes, referendum by petition is obsolete because nearly all bills enacted by the

General Assembly contain a "safety clause" stating that the measure is necessary for the immediate preservation of the public peace, health and safety. When a safety clause is utilized, the legislation is not subject to a referendum.

Presently, the Colorado Constitution requires that signers of initiative or referendum petitions be qualified electors or legal voters. Based on Colorado Supreme Court decisions, qualified elector and legal voter are equivalent terms. A qualified elector means every person who on the date of the next ensuing election has attained the age of eighteen years, is a citizen of the United States, and has resided in this state and a certain precinct thirty-two days immediately preceding the election. In order to vote in a general election, a qualified elector must first register with the county clerk. Briefly, registration includes affirming citizenship, residency, and signing the registration form. In sum, all legally registered electors are qualified electors, but not all qualified electors are registered electors.

In 1978, the number of registered electors in Colorado numbered 1,345,006, compared to an estimated 1.8 million qualified electors. Thus registered electors constitute a much smaller pool of potential signers of initiative measures. The amendment, however, would reduce the number of signatures needed for a statewide initiative from eight percent to five percent of the total votes cast for Secretary of State at the previous election. Based on 1978 data, about 62,200 signatures of qualified electors are needed on statewide initiative petitions—an estimated 3.4 percent of all qualified electors. The proposal would reduce the number of signatures required to about 38,800 -- an estimated 2.9 percent of all registered electors. Although fewer persons would be eligible to sign petitions, the relative number of signatures required would be smaller.

The initiative and referendum are applicable to cities and towns, including home rule municipalities. The proposal would require that signatures of not more than 10 percent of the registered electors of a city or town would be needed for a referendum and not more than 15 percent for an initiative measure. Under current law these maximum signature requirements are applicable to qualified electors rather than registered electors.

Public hearing on initiative proposals. The proposed amendment would require that the original text of any proposed initiative must be submitted to the legislative research and drafting offices for review and comment. Both offices are agencies of the Colorado General Assembly. The review and comment by the two agencies would be presented to the proponents of an initiative at a meeting open to the public. The proponents could disregard any or all comments made by the legislative staff agencies and would not be required to amend, modify, or alter any measure prior to petition circulation and placement on the ballot.

The review and comment procedure proposed by the amendment would revise the current statutory procedure provided for proponents of statewide initiatives pursuant to section 1-40-101, *Colorado Revised Statutes of 1973.* Presently, comments made to proponents must be kept confidential until the time the ballot title is established. A purpose of the existing comment procedure is to assist the proponents of an initiative in developing technically **[p. 3]** inform the public, as well as proponents, of the potential impact of the original draft of any proposed initiative.

Limitation on articles proposed for amendment by the General Assembly. While people may initiate amendments to the Colorado Constitution under Article V, a separate article also authorizes the General Assembly to submit proposed constitutional amendments to the Colorado voters

for their consideration. The Colorado Constitution currently provides that the General Assembly may not propose amendments to more than six articles of the constitution in any one session. The General Assembly is organized on a biennial or two-year bases, but convenes in regular sessions annually. The amendment would limit each General Assembly to proposing amendments to not more than six articles. In past general elections, the General Assembly has not offered amendments to more than six articles of the Colorado Constitution. As recently as the general elections in 1974, 1970, and 1954, the General Assembly did offer amendments to six articles. The Colorado Constitution contains 25 articles. The amendment would clarify the number of articles that the General Assembly could propose to amend at any one election, but it would not restrict the number of changes proposed for any six articles.

Popular Arguments For

1) The present procedure in which any qualified elector may be eligible to sign an initiative petition makes any challenge of the signatures on an initiative petition impractical because there is no official record of qualified electors. Without an inordinate expense of time and resources, it is impossible for a citizen, organization, or even the Secretary of State to actually determine the validity of the 62,200 signatures now required to place an initiative petition on the statewide ballot. The likelihood of fraud in the petition process would be greatly reduced by requiring the signatures of registered electors. If a question arises as to the authenticity of legality of the signatures gathered on any petition, verification could be easily made by comparing the signatures and residences on the petition with the names and residences of all registered electors as shown in the registration books of the county clerks and recorders.

2) The amendment would place greater responsibility on the part of those person circulating petitions to determine whether the individual signing the petition is eligible to sign the petition. The proponents would have access to public records of registered electors and would ascertain the validity of their petitions prior to filing, thus reducing any possibility of challenge by those persons opposing the petition.

3) The amendment would reduce the number of signatures needed to place an initiative measure on the ballot and provide more time in the summer preceeding [sic] the election for the collection of signatures. For the 1980 general election, for example, sponsors of statewide initiative measures must obtain in excess of 62,000 signatures in order to place an initiative measure on the statewide ballot. If the proposed amendment were in effect, less than 39,000 signatures would be required. The amendment would also extend the date for collection of signatures by changing the final day for filing signatures from early July to early August. The increase in the number of days allowed for circulation of signatures at this time is important because voter interest increases with the proximity of the election. Furthermore, many initiative matters involve items considered by the General Assembly, and would be allowed for proponents to determine whether a particular measure will be enacted into law by the General Assembly before attempting to initiate a measure.

[p. 4] 4) The requirement that the review and comments of the legislative agencies be presented to the proponents of a proposed initiative at a meeting open to the public is a significant improvement over the current practice which provides for a confidential meeting with proponents. An open public meeting would help assure that all relevant questions and issues surrounding the proposals are raised at the proper time -- before the circulation of the petition for signatures. At present, very little information is available to

persons signing petitions other than that provided by sponsors and circulators of the petitions. Public disclosure from the beginning would enhance the likelihood of an electorate which is essential to a constructive initiative process.

Popular Arguments Against

1) The initiative and referendum are two fundamental exercises of political power provided by the state constitution. Any attempt to amend the initiative process should enhance rather than limit the ability of all adult citizens to petition for a change in the laws. The proposed amendment would mean that nearly 500,000 Coloradoans [sic], 18 years of age and older, would not be eligible to sign an initiative or referendum petition simply because they are not registered to vote. The current initiative and referendum process may encourage these individuals to participate in governmental decision making.

2) There is no need to tighten the integrity of the signature gathering process or initiated petitions. Every petition warns potential signers that it is a felony to sign a petition more than once or to sign a petition knowing that he or she is not a qualified elector. Each petition states the conditions that must be met to be a qualified elector. In those instances in which signatures of qualified electors are challenged, the courts may resolve the matter. Rather than ensure the integrity of petitions by requiring that signers by registered electors, the amendment would create uncertainly for both potential signers and circulators of petitions regarding whether an individual was a registered elector.

3) The amendment would require that original drafts of the text of initiated proposals must be submitted to legislative staff agencies for review and comment. Comments are to be rendered at a public hearing following

full and timely notice. Substantial publicity probably would be given to a proposal at this time. However, the original draft of an initiative may be changed prior to the time the measure is circulated for signatures. Thus the information made available to the public at the proposed hearing may not reflect the actual language of the final petition or the language that would be considered by those signing petitions or voting on the measure at the general election. Giving publicity to the original draft language of a proposed measure would be unfair to initiative proponents, especially if significant revisions are made before a final draft measure is submitted for public consideration.

4) Colorado's initiative process as not resulted in an unreasonable number of statewide measures appearing ont he ballot. During the 1970s, the total number of statewide initiated measures submitted to the people at each election was: 1970-zero; 1972-seven; 1974-four; 1976-six; and 1978-one. In considering these 18 proposals, the voters approved six and defeated 12. At the general election in November of 1980, only four statewide initiated measures will be considered. This would seem to indicate that the process has not been abused.

APPENDIX F

HOUSE OF REPRESENTATIVES

STATE OF COLORADO

REPORTER'S TRANSCRIPT
Senate Bill 93-135
April 7, 1993

Pursuant to notice to all parties in interest, the above-referenced matter came on for hearing on second reading before the Colorado House of Representatives, Denver, Colorado, on Wednesday, April 7, 1993, at the approximate hour of 9:20 a.m.

* * *

[p. 5] So now we are back to what our current law is. Individuals may carry as many as they desire.

Those were the key provisions that were in that committee amendment.

Now, Madam Chairman, if I may move on to a discussion of the bill since we have already adopted that amendment.

CHAIRWOMAN KREUTZ: Okay. The bill as amended. Representative Fleming.

REPRESENTATIVE FLEMING: Thank you, Madam Chairman.

CHAIRWOMAN KREUTZ: Is there discussion?

(No response.)

REPRESENTATIVE FLEMING: May I proceed?

CHAIRWOMAN KREUTZ: Yes. Representative Fleming.

REPRESENTATIVE FLEMING: Senate Bill 135 basically is--is a draft--drafted to address some problems that we have been seeing occurring in our initiative and petition process out there.

Last year, on the ballot, we exceeded the State of California in the number of these initiatives on the ballot. And along with that came--as--as we go through the process and have more and more issues on our ballot, we are seeing some problems arise. And that's what 135 **[p. 6]** is brought before you to resolve. It's to address some of those concerns.

It will inform the public in a more timely manner what issues will be on the ballot at the general election in odd years. It will cut costs by approximately $10,513 per--per petition. And how we expect to do that is through the procedure of allowing for random sampling, a process which is being used in a number of states.

It reduces the taxpayers' costs while speeding up the decision for the proponents.

If after the random sample, it appears that less than 90 percent or more than a hundred percent of the required signatures have been submitted, the Secretary of State will announce the results of sufficiency. If you have less than 90 percent, you do not make the ballot. If you have more than

110, you do. If you are in that range of between 90 percent and 110 percent of the required signatures submitted, the Secretary of State will check all signatures.

The process will be streamlined, allowing protests to go directly to court. This again will save time and thousands of dollars.

Requires the proponents who pay circulators to report to the Secretary of State the paid circulators' names and addresses.

[p. 7] The bill includes enabling legislation again for those local governmental entities so that the process of placing a measure on their ballots is clear.

The amendment reorganizes the statutory provisions that govern initiative and referendum procedure. And one of the major features of this measure is that all decisions and filing times are tied to the Constitution. This--by doing so, in this way if we are amended again, no additional legislation will be needed to implant--to implement the will of the people.

Basically, the bill assures that the people of the State of Colorado will continue to have full access to the ballot through a clear and simple process.

What I'd like to do now is, there has been an awful lot of--of misinformation that has been passed about out there, and I'd like to go through some of those items and tell you what is not in the bill.

There are no new fees in the bill. That provision is removed. The cure process remains in place and intact as placed--as in the original language of the--the measure passed by Representative Duke a few years back.

Again, the persons carrying petitions now may carry as many of the petitions as they so desire. The six months' process for passing petitions remains intact. The time clock starts ticking at the point of--the **[p. 8]** title--title setting board has set the title. Six months, that is current law, is present.

Those are a lot, I think, of the major concerns that--that you all have been hearing about. Those--those are the provisions that have not been changed that follow current law. Many of the concerns that you have seen in the printed material raised before you are really not with the proposal of 135. They are with current law. They are with a measure that was passed, I believe, in 1989 and has been current law since then.

And many of the objections you've seen in the printed material refer to that current, existing law. We're doing very little to change many of those provisions in this bill.

With that, I'd just like to make a couple more points and then I'll close and let others who have comments to make, make them.

The burden of proof issue. This bill does nothing to change the burden of proof. What we do change is the process and the role the Secretary of State plays. You know, any matter litigated in this nation requires the proponents by at least a preponderance of the evidence to show the validity of their position. This statute continues that tradition. The burden of proof has been, always has been, and continues to be **[p. 9]** on the proponents. We simply change a process here.

With that, there's many other discussions regarding the time lines. The time lines in the statute and the Constitution are designed to assure that the process gives sufficient time

for reflection and modification but doesn't drag on forever if the measure doesn't have the support of the community. A balance is struck between expeditious hearings and sufficient time to do the task right.

And the issue of destruction of petitions. Again, I would submit to you is--is an area where we again look at containing fraud. That is the--the two main things we're attempting to do with 135, is to put together a clear timely process to allow the initiatives to make it to the ballot; those that have followed the process in the proper form. And secondly, to constrain fraud in this state.

Last election cycle, there were nine warrants issued for fraud out there. We have only been able to serve on four because unfortunately, we had no identification as to where to find those other five individuals. And let me tell you, we did hear sufficient testimony in committee that fraud was occurring.

One striking piece of testimony I recall was a gentleman who himself was head of a petition drive. He had hired and paid those circulators out there. He had **[p. 10]** paid the--the circulators. The petitions were handed back to him. He was told he had some 32,000-plus signatures. When he sat down and counted them himself, he only found he had 26,000. So his own paid circulators had--had frauded him.

These are the kinds of comments and letters and concerns and testimony we heard in the Business Affairs and Labor Committee. That is why we have put in here the process for identifying who the circulators are, having them record--be identified by a name and an address so that when indeed there is this attempt to defraud the public out there, we have a way of--of prosecuting these individuals.

No one here is attempting to limit the process. We just want it to be a clear and well defined process and one that is fraud free.

And I have for you another example of--of fraud which as we go on here in the debate, perhaps I'll have an opportunity to--to show you. I don't know where it is. I've a photograph of a gentleman in--sitting on a park bench--here he is--in Boulder County. And what this sign says is, "Keep gambling out of Boulder County."

Incidentally, this is an exhibit. And it is dated and was presented for some of the legal proceedings that have been going on.

And as we all know, there were no gambling **[p. 11]** initiatives on the ballot regarding Boulder County last year. And this is how this individual attempted to gather signatures. Folks, this is fraud. He is frauding the public by advertising that, you know, he's got a petition here that's going to keep gambling out of Boulder while he's sitting in the middle of Boulder.

These are the kinds of things that this bill is designed to address.

With that, Madam Chairman, I will shut up and let others have a turn. I would just ask for your favorable consideration.

* * *

APPENDIX G

DAVIDSON - REDIRECT

[p. 159, ll. 1-25]

Q Now, has there been an increase in the number of initiatives over the past two years--four years, I'm sorry, starting from 1990?

A There has been an increase.

Q And I'm talking about citizen-initiated--

A That's--

Q --measures.

A That's correct.

Q And if my recollection is correct, there were three citizen-initiated members--measures in 1990?

A That's correct.

Q And there were ten in 1992?

A That is also correct.

Q Okay. And four have been certified this year already?

A That is correct.

Q How many registered electors are there in the State of Colorado presently?

A 1.8--it's almost 1.9 million.

Q Okay. And do you know how many qualified electors there are?

A There's 2--as of 1990--I mean, excuse me, 1992, there was 2.6, I believe.